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**WHAT:** Free public briefings (approximately 3 hours) to present:

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4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

**WHEN:** Tuesday, October 22, 2013  
9 a.m.-12:30 p.m.

**WHERE:** Office of the Federal Register  
Conference Room, Suite 700  
800 North Capitol Street, NW.  
Washington, DC 20002

**RESERVATIONS:** (202) 741-6008



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# Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

RIN 3206-AM78

### Prevailing Rate Systems; North American Industry Classification System Based Federal Wage System Wage Surveys

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Personnel Management is issuing a final rule to update the 2007 North American Industry Classification System (NAICS) codes currently used in Federal Wage System wage survey industry regulations with the 2012 NAICS revisions published by the Office of Management and Budget.

**DATES:** *Effective date:* This rule is effective October 23, 2013. *Applicability date:* This rule applies for local wage surveys beginning on or after February 21, 2014.

**FOR FURTHER INFORMATION CONTACT:** Madeline Gonzalez, by telephone at (202) 606-2838 or by email at [pay-leave-policy@opm.gov](mailto:pay-leave-policy@opm.gov).

**SUPPLEMENTARY INFORMATION:** On March 26, 2013, the U.S. Office of Personnel Management (OPM) issued a proposed rule (78 FR 18252) to update the 2007 North American Industry Classification System (NAICS) codes used in Federal Wage System (FWS) wage survey industry regulations with the 2012 NAICS revisions published by the Office of Management and Budget (OMB). The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by consensus that we adopt these changes. The 30-day

comment period ended on April 25, 2013. OPM received two comments from a labor organization.

The first comment received from the labor organization was in reference to section 532.285 of title 5, Code of Federal Regulations—Special wage schedules for supervisors of negotiated rate Bureau of Reclamation employees. The labor organization asked if the special schedule rates for supervisors of negotiated rate Bureau of Reclamation (BOR) employees at the Yuma Projects Area were based on the negotiated rates of union represented workers. The answer is no, rates for supervisors of negotiated rate BOR employees are not based on the negotiated rates of union represented workers. Section 532.285 provides that the special wage rates for supervisors of negotiated rate BOR employees be based on annual special wage surveys conducted by BOR in each special wage area. Survey jobs representing BOR positions at up to four levels will be matched to private industry jobs in each special wage area. Special schedule rates for each position will be based on prevailing rates for that particular job in private industry.

The labor organization's second comment was in reference to NAICS code 332994 (Small arms, ordnance, and ordnance accessories manufacturing), which OPM proposed be added to the list of required NAICS codes in the Artillery and combat vehicle specialized industry in 5 CFR 532.313. The labor organization asked if the addition of NAICS code 332994 would also encompass cannon tube production from Federal arsenals. The Department of Defense, the lead agency responsible for conducting FWS surveys and issuing wage schedules, surveys cannon manufacturers. Previously, OMB listed cannon manufacturing under NAICS code 332995, but with the 2012 update, it is now listed under NAICS code 332994. We note, however, that the law requires that FWS wage surveys include only private sector employers. If a private sector employer identified under NAICS code 332994 exists in a wage area, it may be included in an FWS wage survey. DOD does not survey any Federal agencies in order to set pay for FWS employees.

We have not made any changes to the final regulations based on these two comments. This final regulation is effective 30 days after publication.

However, to provide DOD with sufficient time and a fixed date for planning surveys and implementing changes required by OMB's 2012 NAICS revisions, the regulation is applicable for wage surveys ordered to begin on or after February 21, 2014. As OMB continues to update NAICS codes periodically, we will update these regulations to correspond to the updated NAICS codes based on advice we receive from FPRAC.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

### Executive Order 13563 and Executive Order 12866

This proposed rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 13563 and Executive Order 12866.

### List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

**Elaine Kaplan,**  
*Acting Director.*

Accordingly, the U.S. Office of Personnel Management amends 5 CFR part 532 as follows:

### PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

#### § 532.213 [Amended]

■ 2. In § 532.213, amend the table headings in both columns by replacing the year “2007” with “2012.”

#### § 532.221 [Amended]

■ 3. In § 532.221, amend the table as follows:

■ a. Revise the year “2007” to “2012” in the table headings in both columns;  
■ b. Remove NAICS codes “44311,” “7221,” and “7222” in the first column and “Appliance, television, and other electronic stores,” “Full-service

restaurants,” and “Limited-service eating places” in the second column; and

■ c. Add NAICS codes “443” and “7225” in the first column in numerical order and “Electronics and appliance stores” and “Restaurants and other eating places” in the second column.

#### § 532.267 [Amended]

■ 4. In § 532.267(c)(1), amend the table as follows:

■ a. Revise the year “2007” to “2012” in the table headings in both columns;

■ b. Add NAICS code “333316” in the first column in numerical order and “Photographic and photocopying equipment manufacturing” in the second column;

■ c. Revise the title of NAICS code 334613 from “Magnetic and optical recording media manufacturing” to “Blank magnetic and optical recording media manufacturing” in the second column; and

■ d. Revise the title of NAICS code 4921 from “Couriers” to “Couriers and express delivery services” in the second column.

#### § 532.285 [Amended]

■ 5. In § 532.285(c)(1), amend the table headings in both columns by replacing the year “2007” with “2012.”

#### § 532.313 [Amended]

■ 6. In § 532.313(a), amend the table as follows:

■ a. Revise the year “2007” to “2012” in the table headings in both columns;

■ b. Add NAICS code “333316” in the first column in numerical order and “Photographic and photocopying equipment manufacturing” in the second column to the list of required NAICS codes for the Electronics Specialized Industry, Guided Missiles Specialized Industry, and Sighting and Fire Control Equipment Specialized Industry;

■ c. Remove NAICS codes “332212,” “332995,” “336312,” “336322,” and “336399” in the first column and “Hand and edge tool manufacturing,” “Other ordnance and accessories manufacturing,” “Gasoline engine and engine parts manufacturing,” “Other motor vehicle electrical and electronic equipment manufacturing,” and “All other motor vehicle parts manufacturing” in the second column from the list of required NAICS codes for the Artillery and Combat Vehicle Specialized Industry; and

■ d. Add NAICS codes “332216,” “332994,” “33631,” “33632,” and “33639” in the first column in numerical order and “Saw blade and hand tool manufacturing,” “Small arms,

ordnance, and ordnance accessories manufacturing,” “Motor vehicle gasoline engine and engine parts manufacturing,” “Motor vehicle electrical and electronic equipment manufacturing,” and “Other motor vehicle parts manufacturing” in the second column to the list of required NAICS codes for the Artillery and Combat Vehicle Specialized Industry.

[FR Doc. 2013–22498 Filed 9–20–13; 8:45 am]

BILLING CODE 6325–39–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS–2009–0084]

RIN 0579–AD56

### Importation of Litchi Fruit From Australia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

**SUMMARY:** We are amending the regulations in order to allow, under certain conditions, the importation of commercial shipments of litchi fruit from Australia into the continental United States, except Florida. As a condition of entry, the litchi fruit must be treated with irradiation and subject to inspection. If irradiation is applied outside the United States, the fruit must be inspected jointly by inspectors from the Animal and Plant Health Inspection Service and the national plant protection organization (NPPO) of Australia prior to departure and accompanied by a phytosanitary certificate issued by the NPPO of Australia certifying that the fruit received the required irradiation treatment. If irradiation is to be applied upon arrival in the United States, the fruit must be inspected by Australian inspectors prior to departure and accompanied by a phytosanitary certificate issued by the NPPO of Australia. Additionally, the litchi fruit may not be imported into or distributed within the State of Florida, due to the presence of litchi rust mite in Australia. This action allows for the importation of litchi fruit from Australia into the continental United States, except Florida, while continuing to provide protection against the introduction of quarantine pests.

**DATES:** Effective Date: October 23, 2013.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dorothy C. Wayson, Regulatory Coordination Specialist, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737–1231; (301) 851–2036.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–60, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests.

On December 28, 2011, we published in the *Federal Register* (76 FR 81401–81404, Docket No. APHIS–2009–0084) a proposal<sup>1</sup> to amend the regulations to allow fresh litchi fruit (*Litchi chinensis* Sonn.) from Australia to be imported into the continental United States, except Florida. We proposed that, as a condition of entry, the litchi fruit would have to be produced in accordance with a systems approach that includes requirements for monitoring and oversight, irradiation treatment of the fruit, limited distribution, and shipping.

We solicited comments concerning our proposal for 60 days ending February 27, 2012. We received four comments by that date. They were from two students, a representative of a foreign government, and an organization of State plant regulatory officials. The comments are discussed below by topic.

##### Pest List

We prepared a pest risk assessment (PRA) and a risk management document for the importation of fresh litchi fruit from Australia. That PRA evaluated the risks associated with the importation of litchi fruit with up to 5 millimeters of stem into the continental United States from Australia. The threshold allowing for a maximum of 5 millimeters of stem on the imported litchi fruit was included in Australia’s market access request and therefore established as the allowable limit in the PRA.

One commenter stated that neither the proposed rule nor the PRA provided phytosanitary justification for the inclusion of this 5 millimeter limit. The commenter further stated that, while the 5 millimeter stem length was included in Australia’s market access request, it had been intended only as part of a general description of Australia’s standard litchi fruit production practices. The commenter asked that the limit be removed in light of the fact that

<sup>1</sup> To view the proposed rule and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0084>.

those pests associated with stems and twigs would either be mitigated by the treatments described in the systems approach regardless of stem length or were not listed as following the pathway of importation.

We agree with the commenter and have removed the requirement.

The PRA identified 15 pests of quarantine significance present in Australia that could be introduced into the United States through the importation of litchi fruit, including 3 fruit flies, 7 lepidopteran pests, 2 scales, 2 other insect pests, and 1 mite.

Green scale (*Coccus viridis*) and passionvine mealybug (*Planococcus minor*) were included in the proposed rule and PRA as being two of the quarantine pests of litchi subject to mitigation. Subsequent to publication of the proposed rule, we established that *Coccus viridis* and *Planococcus minor* no longer meet our definition of a quarantine pest and have added them to our list<sup>2</sup> of pests that we no longer regulate. Therefore, we will not be including *Coccus viridis* and *Planococcus minor* among the pests to be listed in the additional declaration on the phytosanitary certificate. This change has the effect of addressing one commenter's recommendation that *Planococcus minor* not be regarded as a pest following the pathway of commercial shipments.

One commenter requested that we intensively monitor litchi fruit from Australia at the port of entry for the litchi hairy mite (*Aceria litchii*), which is not eliminated by irradiation.

Port of entry inspection is among the required phytosanitary measures that apply to the importation of litchi fruit from Australia. These measures, which also include requirements concerning irradiation, commercial shipments, and limited distribution, have been successfully applied to shipments of litchis imported from Thailand, where the litchi hairy mite is also present. Based on our experience, we are confident in the efficacy of the standard level of inspection in detecting quarantine pests and preventing their entry into the United States.

### Proposed Systems Approach

Based on the risk management document, we determined that measures beyond the standard port of arrival inspection are required to mitigate the risks posed by the plant pests associated with the importation of litchi fruit from Australia. We proposed to allow the

importation of litchi fruit from Australia into the United States only if they are produced in accordance with a systems approach to mitigate pest risk.

One commenter objected to our use of the term "systems approach." The commenter stated that since all pests identified as likely to follow the importation pathway are mitigated by the proposed irradiation treatment and because no specific in-field management measures were stipulated, the combination of measures would not qualify as a systems approach. The commenter asked that we remove all references to the systems approach from the regulation.

We are making no change as a result of this comment. We proposed a number of requirements that shipments of litchi fruit from Australia would have to meet prior to importation. These requirements concerned place of production, treatment with irradiation, certificates of inspection issued by the national plant protection organization (NPPO) of Australia, limited distribution, and limitation to commercial consignments only. For the reasons discussed below, we have decided to remove the requirement relating to place of production. Contrary to the commenter's assertion, the litchi hairy mite is not mitigated by the irradiation treatment and therefore necessitates specific inspection. In addition, the limited distribution requirement is an additional measure beyond the standard port of arrival inspection which is required to mitigate the risks posed by the plant pests associated with litchis from Australia. Furthermore, the proposed measures meet the definition of systems approach as found in International Standards for Phytosanitary Measures (ISPM) No. 5: The integration of different risk management measures, at least two of which act independently, and which cumulatively achieve the appropriate level of protection against regulated pests.

One element of the proposed systems approach was a requirement that the litchi fruit be grown in approved places of production that are registered with and monitored by the NPPO of Australia.

One commenter argued that the monitoring requirement should be removed, as the proposed systems approach did not include any requirements for in-field control measures of the sort that would require NPPO oversight. The commenter stated that the other methods of control listed as part of the proposed systems approach would be sufficient to mitigate risks posed by those pests discussed in

the PRA and the risk management document.

We agree with the commenter. Regulatory requirements concerning the monitoring of approved places of production are associated the application of in-field measures needed to address a specific pest risk, which is not the case with the mitigation measures assigned for litchi fruit from Australia as detailed in the PRA. Rather, the framework equivalency workplan required for irradiated fruits and vegetables as described in § 305.9(e)(1)(B) of our phytosanitary treatments regulations, stipulates that the U.S. and the exporting country's NPPO must establish the type and amount of inspection, monitoring, or other activities that will be required in connection with allowing the importation of irradiated fruits and vegetables. Such workplans include requirements for NPPO-approved places of production for the purpose of specific traceability in the event of an unforeseen pest situation. This allows for the Animal and Plant Health Inspection Service (APHIS) and the NPPO to work collaboratively to address the situation in-country without applying unnecessary importation restrictions.

Another element of the proposed systems approach was a requirement that the litchi fruit be imported in commercial consignments only. This is because commercially produced fruit are already subject to standard commercial cultural and post-harvest practices that reduce the risk associated with plant pests. Export orchards that are registered production sites with traceback capability was cited as one of those practices that helps ensure the phytosanitary security of exported litchis.

One commenter requested that we exclude the requirement regarding registered production sites with traceback capability. The commenter argued that such a stipulation is inconsistent with the requirements of previous rules regarding the importation of fruits and vegetables from Australia as well as rules regarding the importation of litchi fruit from countries other than Australia. The commenter concluded that, from a regulatory flexibility standpoint, it would be preferable to include any requirement regarding traceability in the framework equivalency workplan given that these workplans may be amended more easily to reflect any changing conditions within the country that would necessitate such tracking.

We agree with the commenter's point and have removed references to the

<sup>2</sup> This list can be viewed at [http://www.aphis.usda.gov/plant\\_health/plant\\_pest\\_info/frsmp/non-reg-pests.shtml](http://www.aphis.usda.gov/plant_health/plant_pest_info/frsmp/non-reg-pests.shtml).

requirement that orchards be registered with and monitored by the NPPO of Australia in this final rule. We also agree that any such requirements are more appropriately located in the framework equivalency workplan where, as with the conditions concerning monitoring requirements discussed previously, they would provide for specific traceability in the event of an unforeseen pest situation.

Another element of the proposed systems approach was a requirement that litchi fruit be treated with a minimum absorbed irradiation dose of 400 gray in accordance with the provisions of § 305.9 and the Plant Protection and Quarantine Treatment Manual. This is the established generic dose for all insect pests, except pupae and adults of the order Lepidoptera. While the preamble text in the proposed rule specified that such treatment could be conducted at an approved facility in Australia or in the United States, the proposed regulatory text stated that treatment would have to be conducted prior to importation of the fruits into the United States.

The commenter asked that the requirement for the fruit to be treated prior to importation into the United States be removed.

We agree with the commenter and have changed the requirement accordingly. If irradiation is applied outside the United States, the fruits must be inspected jointly by inspectors from APHIS and the NPPO of Australia prior to departure and accompanied by a phytosanitary certificate issued by the NPPO of Australia certifying that the fruit received the required irradiation treatment. If irradiation is to be applied upon arrival in the United States, the fruits must be inspected by Australian inspectors prior to departure and accompanied by a phytosanitary certificate issued by the NPPO of Australia.

In addition to altering the requirement associated with the location of the irradiation treatment, we are also removing the stipulation that this information be contained in an additional declaration, as an additional declaration is not used for certifying application of a treatment or details of a treatment. Instead, if irradiation is applied outside the United States, the fruits must be inspected jointly by inspectors from APHIS and the NPPO of Australia prior to departure and accompanied by a phytosanitary certificate issued by the NPPO of Australia certifying that the fruit received the required irradiation treatment. We included the requirement concerning the additional declaration

regarding treatment information in error in the proposed rule. Certification of irradiation treatment will provide sufficient phytosanitary protection.

Because the litchi hairy mite is not present in Florida and because we have consistently prohibited host movement into Florida from areas where that pest is present, another aspect of the proposed systems approach was to prohibit the importation and distribution of litchi from Australia into the State of Florida by requiring that all cartons of litchi be stamped "Not for distribution in FL."

One commenter stated that we should also restrict importation of litchi fruit into the State of California given that Florida and California have similar climates that allow for the establishment and survival of the litchi hairy mite. Another commenter stated that commercial litchi production is an emerging field in California and those small- and medium-scale agricultural producers and family farms in particular would be helped by the exclusion of Australian litchi fruit from California.

We are making no change as a result of these comments. Unlike the more humid climate found in Florida, the dry Mediterranean climate in California is not conducive for the survival of the litchi hairy mite. Additionally, the occurrence of seasonal cold snaps and high winds in California causes flower loss and, consequently, poor fruit set. The litchi tree needs a truly tropical climate to produce much fruit. Further, production levels of litchi in California are low. We therefore believe that the improbability of mite survival and the small number of hosts available in California are sufficient to mitigate the risk posed by litchi hairy mite. Finally, regarding the second commenter's point, APHIS does not have the authority to prohibit commodities for importation solely based on potential economic impact. The determining factor must be scientifically established pest risk.

#### Pest Risk Analysis

The Asian ambrosia beetle (*Euwallacea fornicatus*) was listed in the PRA as being a pest of litchi present in Australia that is also present in Hawaii. We determined that *Euwallacea fornicatus* was not likely to follow the importation pathway and therefore did not address it further via mitigations. One commenter stated that we should remove *Euwallacea fornicatus* from the list of quarantine pests in the PRA because the pest is also present in Florida and California in addition to Hawaii.

The commenter is correct regarding the distribution of *Euwallacea fornicatus* within California, Florida, and Hawaii. However, while the beetle is present in California and Florida based on more recent references than those cited in the PRA, it is also currently listed as reportable in a domestic context and is currently being assessed by the United States Department of Agriculture's New Pest Advisory Group. *Euwallacea fornicatus*, therefore, meets our standards regarding quarantine pests. For that reason, we are making no changes as a result of this comment.

#### Economic Analysis

We analyzed the potential economic effects of the importation of litchi fruit from Australia on small entities and concluded that any litchi price declines that might result from this rule would be insignificant, especially if, as is likely, at least some litchi fruit imports from Australia were to displace imports from other countries. Additionally, we stated that, given that the agricultural seasons in the Southern Hemisphere are generally the opposite of those in the Northern Hemisphere, the proposed imports from Australia likely would not directly compete with U.S. litchi fruit production. As a result, we determined that the importation of litchi fruit from Australia would not have a significant economic impact on a substantial number of small entities.

One commenter stated other agencies such as the United Nations Food and Agriculture Organization do not distinguish between fresh and processed fruit, while the U.S. Harmonized Tariff System group litchi fruit with other exotic fruits into a single category. The commenter further stated that the analysis performed by APHIS to determine the economic effects of the proposed rule on small entities uses data from 2004 and earlier in order to reach its conclusions. The commenter concluded that it is important to base any economic analysis on current data that is segregated specifically by fruit type in order to best inform the decisionmaking process.

We are making no changes as a result of this comment. The commenter rightly observes that the United Nations Food and Agriculture Organization and the U.S. Harmonized Tariff System do not separate shipment data concerning fresh litchis in particular, however we did not use data from either of these sources in order to conduct our economic analysis. The most recent sources of information specifically regarding fresh litchis are from the Proceedings of the Florida

State Horticultural Society, 118,<sup>3</sup> and a paper entitled "Is It Still Profitable to Grow Lychee in Florida?," which was released by the Food and Resource Economics Department, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, and may be found on the Internet at <http://edis.ifas.ufl.edu/fe496>. These papers are dated 2005 and 2004, respectively. They represent the most recent, targeted economic information available on the subject of the importation of litchi fruit and the domestic market.

The commenter also said that the two main factors that affect the profitability of litchi farmers in the United States are product yield and market price. The commenter referenced an analysis conducted by the University of Florida, Department of Food and Resource Economics, which concluded that net returns are very sensitive to even small market price fluctuations, even more than a similar increase or decrease in yield.

We are making no changes as a result of this comment. The quantity of litchi fruit that Australia proposes to export to the United States (400 metric tons) represents 2.7 percent of total U.S. imports. This relatively small quantity is unlikely to cause market fluctuations.

The commenter agreed that the importation of litchi fruit from Australia alone is not likely to have a major effect on the price of litchi sold in the United States due to the small quantity and the differing harvest periods in the Northern and Southern Hemispheres. However, the commenter also stated that litchi fruit imported from Australia, when considered in conjunction with litchi fruit imported from countries such as Thailand, Vietnam, and South Africa, may contribute to the declining price of litchi fruit overall. The commenter stated that APHIS should take into account projected import levels of litchi fruit from all countries, rather than considering such importations on country-by-country basis.

We are making no changes as a result of this comment. APHIS evaluates commodity import requests on a case-by-case basis. Accordingly, the economic analysis considers total imports levels from those countries that currently export to the United States in conjunction with the projected level of imports from the requesting country. Prior to the publication of this rule, we allowed for the importation of litchi fruit from China, India, Taiwan, and

Thailand, and therefore based our assessment of the potential economic impact of the rule on imports from those countries. In the event that other countries, such as Vietnam or South Africa, submit requests for market access for litchi fruit, we will evaluate the economic impacts of imports from those countries. We do not consider the potential economic impact of exports of commodities from countries that have not submitted market access requests to us.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

World production of litchi is estimated to be 2.2 million metric tons (MT), with China accounting for over 50 percent (1.2 million MT), and one-third produced by India (0.7 million MT). The United States produces approximately 500 MT per year, which represents less than 0.03 percent of world production. U.S. litchi production is concentrated in the States of Florida, Hawaii, and California. Florida has the largest area under production (1,200 acres), followed by Hawaii (300 acres) and California (60 acres). Currently, Australia produces 3,500 MT of litchis. Australia expects to export approximately 20 forty-foot containers of litchis per year to the United States, which is equivalent to about 400 MT.

In 2004, the United States imported a total of 14,854 MT of litchis, mainly from China, Taiwan, and Mexico. Australia's proposed export quantity represents about 2.7 percent of U.S. imports in 2004.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### **Executive Order 12988**

This final rule allows litchi fruit to be imported into the continental United States from Australia. State and local laws and regulations regarding litchi fruit imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

#### **Paperwork Reduction Act**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579-0386, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

#### **E-Government Act Compliance**

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

#### **List of Subjects in 7 CFR Part 319**

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

#### **PART 319—FOREIGN QUARANTINE NOTICES**

■ 1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 450 and 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

<sup>3</sup> Copies of the proceedings are available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

■ 2. A new § 319.56–61 is added to read as follows:

**§ 319.56–61 Litchi from Australia.**

Litchi (*Litchi chinensis*) may be imported into the continental United States from Australia only under the following conditions and in accordance with all other applicable provisions of this subpart:

(a) The litchi must be treated for plant pests of the class Insecta, except pupae and adults of the order Lepidoptera, with irradiation in accordance with § 305.9 of this chapter. Treatment may be conducted either prior to or upon arrival of the fruits into the United States.

(b) Each shipment of litchi must be accompanied by a phytosanitary certificate of inspection issued by the NPPO of Australia. For those shipments of litchi treated in Australia, the phytosanitary certificate must certify that the fruit received the required irradiation treatment prior to shipment. For those shipments of litchi treated upon arrival in the United States, the fruits must be inspected by Australian inspectors prior to departure and accompanied by a phytosanitary certificate.

(c) In addition to meeting the labeling requirements in part 305 of this chapter, cartons in which litchi are packed must be stamped “Not for importation into or distribution in FL.”

(d) The litchi may be imported in commercial consignments only.

(Approved by the Office of Management and Budget under control number 0579–0386)

Done in Washington, DC, this 17th day of September 2013.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2013–23044 Filed 9–20–13; 8:45 am]

**BILLING CODE 3410–34–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Docket FAA No. FAA–2012–0433; Airspace Docket No. 12–AAL–5]

**Establishment of Class D Airspace; Bryant AAF, Anchorage, AK**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects a final rule published in the **Federal Register** August 8, 2013 that establishes Class D

airspace at Bryant Army Airfield (AAF), Anchorage, AK. In that rule, an error was made in the legal description for Bryant AAF, in that the language indicating Class D airspace as part time was left out.

**DATES:** Effective date, 0901 UTC, October 17, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

**SUPPLEMENTARY INFORMATION:**

**History**

The FAA published a final rule in the **Federal Register** establishing Class D airspace at Bryant AAF, Anchorage, AK (78 FR 48299, August 8, 2013). In the regulatory text, language indicating the Class D airspace area is part time established in advance with a Notice to Airmen was omitted and is now included.

Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9X, dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in that Order.

**Correction to Final Rule**

Accordingly, pursuant to the authority delegated to me, amendatory instruction 2 and the legal description for Bryant Army Airfield, Anchorage, AK, as published in the **Federal Register** on August 8, 2013 (78 FR 48299), FR Doc. 2013–18866, are corrected as follows:

**§ 71.1 [Amended]**

■ 1. On page 48300, column 1, revise amendatory instruction 2 to read: The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013, is amended as follows:

**AAL AK D Bryant Army Airfield, Anchorage, AK [Corrected]**

■ 2. On page 48300, column 1, line 56, the following is added to the regulatory text: This Class D airspace area is effective during the specific dates and times established in advance by a Notice

to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on September 11, 2013.

**Christopher Ramirez,**

*Acting Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2013–23016 Filed 9–20–13; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**Docket No. FAA–2013–0528; Airspace Docket No. 13–ANM–16**

**Establishment of Class E Airspace; Wasatch, UT**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at the Wasatch VHF Omni-Directional Radio Range Tactical Air Navigational Aid (VORTAC) navigation aid, Wasatch, UT, to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Salt Lake City Air Route Traffic Control Center (ARTCC). This improves the safety and management of IFR operations within the National Airspace System. This action also makes a minor adjustment to the geographic coordinates of the Wasatch VORTAC navigation aid.

**DATES:** Effective date, 0901 UTC, December 12, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

**SUPPLEMENTARY INFORMATION:**

**History**

On July 10, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend controlled airspace at Wasatch, UT (78 FR 41336). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA’s Aeronautical

Products office found the geographic coordinates of the Wasatch VORTAC needed to be corrected. This action makes the correction.

Class E airspace designations are published in paragraph 6006, of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E en route domestic airspace extending upward from 1,200 feet above the surface, at the Wasatch VORTAC navigation aid, Wasatch, UT, to accommodate IFR aircraft under control of Salt Lake City ARTCC by vectoring aircraft from en route airspace to terminal areas. This action is necessary for the safety and management of IFR operations. The geographic coordinates of the VORTAC are adjusted from (Lat. 40°51'10" N., long. 111°58'55" W.) to (Lat. 40°51'01" N., long. 111°58'55" W.) in accordance with the FAA's aeronautical database. Except for administrative changes, and the changes listed above, this rule is the same as that proposed in the NPRM.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of

airspace. This regulation is within the scope of that authority as it establishes controlled airspace at the Wasatch VORTAC, Wasatch, UT.

### Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

- 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013 is amended as follows:

*Paragraph 6006 En Route Domestic Airspace Areas.*

\* \* \* \* \*

#### ANM UT E6 Wasatch, UT [New]

Wasatch VORTAC, UT  
(Lat. 40°51'01" N., long. 111°58'55" W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by Lat. 42°27'00" N., long. 113°22'00" W.; to Lat. 41°41'49" N., long. 109°29'35" W.; to Lat. 41°26'15" N., long. 109°19'46" W.; to Lat. 41°10'22" N., long. 109°42'26" W.; to Lat. 40°21'23" N., long. 109°42'25" W.; to Lat. 39°59'03" N., long. 110°43'27" W.; to Lat. 39°37'44" N., long. 111°07'28" W.; to Lat. 39°03'55" N., long. 110°37'49" W.; to Lat. 38°28'51" N., long. 110°38'05" W.; to Lat. 38°10'56" N., long. 111°24'19" W.; to Lat. 37°50'39" N., long. 112°24'51" W.; to Lat. 37°30'00" N., long. 112°03'30" W.; to Lat. 37°30'00" N., long. 113°00'00" W.; to Lat. 37°32'02" N., long. 113°07'15" W.; to Lat. 37°48'00" N., long.

113°30'00" W.; to Lat. 38°23'43" N., long. 113°12'48" W.; to Lat. 38°19'56" N., long. 114°09'07" W.; to Lat. 38°28'04" N., long. 114°21'28" W.; to Lat. 39°38'25" N., long. 114°42'19" W.; to Lat. 40°06'57" N., long. 114°37'44" W.; to Lat. 40°40'40" N., long. 114°28'45" W.; to Lat. 41°08'22" N., long. 114°57'44" W.; to Lat. 42°00'00" N., long. 114°42'42" W., thence to the point of beginning.

Issued in Seattle, Washington, on September 11, 2013.

**Christopher Ramirez,**

*Acting Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2013–22840 Filed 9–20–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2013–0530; Airspace Docket No. 13–AWP–9]

#### Establishment of Class E Airspace; Battle Mountain, NV

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at the Battle Mountain VHF Omni-Directional Radio Range Tactical Air Navigational Aid (VORTAC) navigation aid, Battle Mountain, NV, to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Salt Lake City, Oakland and Los Angeles Air Route Traffic Control Centers (ARTCCs). This improves the safety and management of IFR operations within the National Airspace System.

**DATES:** Effective date, 0901 UTC, December 12, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

#### SUPPLEMENTARY INFORMATION:

#### History

On July 10, 2013, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish controlled airspace at Battle Mountain, NV (78 FR 41335). Interested parties were invited to participate in this rulemaking effort by submitting

written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6006, of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E en route domestic airspace extending upward from 1,200 feet above the surface, at the Battle Mountain VORTAC navigation aid, Battle Mountain, NV, to accommodate IFR aircraft under control of Salt Lake City, Oakland and Los Angeles ARTCCs by vectoring aircraft from en route airspace to terminal areas. This action is necessary for the safety and management of IFR operations.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at the Battle Mountain VORTAC, Battle Mountain, NV.

### Environmental Review

The FAA has determined that this action qualifies for categorical exclusion

under the National Environmental Policy Act in accordance with FAA Order 1050.1E, “Environmental Impacts: Policies and Procedures,” paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

- 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013, and effective September 15, 2013 is amended as follows:

*Paragraph 6006 En Route Domestic Airspace Areas.*

\* \* \* \* \*

#### ANM NV E6 Battle Mountain, NV [New]

Battle Mountain VORTAC, NV  
(Lat. 40°34′09″ N., long. 116°55′20″ W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by Lat. 41°08′22″ N., long. 114°57′44″ W.; to Lat. 40°40′40″ N., long. 114°28′45″ W.; to Lat. 40°06′57″ N., long. 114°37′44″ W.; to Lat. 39°38′25″ N., long. 114°42′19″ W.; to Lat. 38°28′04″ N., long. 114°21′28″ W.; to Lat. 38°19′56″ N., long. 114°09′07″ W.; to Lat. 38°23′43″ N., long. 113°12′48″ W.; to Lat. 37°48′00″ N., long. 113°30′00″ W.; to Lat. 37°49′25″ N., long. 113°42′01″ W.; to Lat. 37°53′44″ N., long. 113°42′03″ W.; to Lat. 38°01′00″ N., long. 114°12′03″ W.; to Lat. 38°01′00″ N., long. 114°30′03″ W.; to Lat. 37°59′59″ N., long. 114°42′06″ W.; to Lat. 37°53′00″ N., long. 116°11′03″ W.; to Lat. 37°53′00″ N., long. 116°26′03″ W.; to Lat. 37°53′00″ N., long. 116°50′00″ W.; to Lat. 38°13′30″ N., long. 117°00′00″ W.; to Lat. 38°13′30″ N., long. 117°16′30″ W.; to Lat. 37°55′11″ N., long. 117°53′37″ W.; to Lat. 39°39′28″ N., long. 117°59′55″ W.; to Lat. 40°04′38″ N., long. 118°49′42″ W., thence to the point of beginning.

Issued in Seattle, Washington, on September 11, 2013.

**Christopher Ramirez,**

*Acting Manager, Operations Support Group,  
Western Service Center.*

[FR Doc. 2013–22846 Filed 9–20–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF JUSTICE

### 28 CFR Part 26

[Docket No. 1540; AG Order No. 3399–2013]

RIN 1121–AA77

### Certification Process for State Capital Counsel System

**AGENCY:** Office of the Attorney General, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** Chapter 154 of title 28, United States Code, provides special procedures for Federal habeas corpus review of cases brought by indigent prisoners in State custody who are subject to a capital sentence. These special procedures are available to States that the Attorney General has certified as having established mechanisms for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State postconviction proceedings brought by such prisoners, and as providing standards of competency for the appointment of counsel in these proceedings. This rule sets forth the regulations for the certification procedure.

**DATES:** *Effective Date:* This rule is effective October 23, 2013.

**FOR FURTHER INFORMATION CONTACT:** Robert Hinchman, U.S. Department of Justice, Office of Legal Policy, 950 Pennsylvania Avenue NW., Washington, DC 20530, at (202) 514–8059 or [Robert.Hinchman@usdoj.gov](mailto:Robert.Hinchman@usdoj.gov).

**SUPPLEMENTARY INFORMATION:** Chapter 154 of title 28, United States Code, makes special procedures applicable in Federal habeas corpus review of State capital judgments if the Attorney General has certified “that [the] State has established a mechanism for providing counsel in postconviction proceedings as provided in section 2265” and “counsel was appointed pursuant to that mechanism, petitioner validly waived counsel, petitioner retained counsel, or petitioner was found not to be indigent.” 28 U.S.C. 2261(b). Section 2265(a)(1) provides that, if requested by an appropriate State official, the Attorney General must

determine “whether the State has established a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State [capital] postconviction proceedings brought by indigent prisoners” and “whether the State provides standards of competency for the appointment of counsel in [such] proceedings.”

Chapter 154 was enacted as part of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Public Law 104–132, section 107, 110 Stat. 1214, 1221–26 (1996), and was amended by the USA PATRIOT Improvement and Reauthorization Act of 2005, Public Law 109–177, section 507, 120 Stat. 192, 250–51 (2006). Before the 2006 amendments, the regional Federal courts in their review of State capital cases determined States’ eligibility for the chapter 154 habeas corpus review procedures. The 2006 amendments re-assigned responsibility for chapter 154 certifications to the Attorney General of the United States, subject to de novo review by the Court of Appeals for the District of Columbia Circuit, and added a provision stating that there are no requirements for certification or for application of chapter 154 other than those expressly stated in the chapter, 28 U.S.C. 2265(a)(3). The effects of the 2006 amendments are explained in an opinion of the Department’s Office of Legal Counsel and, where relevant to a specific provision in the rule, elsewhere in this preamble. See *The Attorney General’s Authority in Certifying Whether a State Has Satisfied the Requirements for Appointment of Competent Counsel for Purposes of Capital Conviction Review Proceedings*, 33 Op. O.L.C. \_\_\_, at \*12 (Dec. 16, 2009) (“OLC Opinion”), available at <http://www.justice.gov/olc/opinions.htm>.

Section 2265(b) directs the Attorney General to promulgate regulations to implement the certification procedure under chapter 154. The Attorney General accordingly published a proposed rule in the **Federal Register** on June 6, 2007, to add a new subpart entitled “Certification Process for State Capital Counsel Systems” to 28 CFR part 26. 72 FR 31217. The comment period ended on August 6, 2007. The Department published a notice on August 9, 2007, reopening the comment period, 72 FR 44816, and the reopened comment period ended on September 24, 2007. A final rule establishing the chapter 154 certification procedure was published on December 11, 2008, 73 FR 75327 (the “2008 regulations”), with an effective date of January 12, 2009.

In January 2009, the United States District Court for the Northern District of California enjoined the Department “from putting into effect the rule . . . without first providing an additional comment period of at least thirty days and publishing a response to any comments received during such period.” *Habeas Corpus Resource Ctr. v. U.S. Dep’t of Justice*, No. 08–2649, 2009 WL 185423, at \*10 (N.D. Cal. Jan. 20, 2009) (preliminary injunction); *Habeas Corpus Resource Ctr. v. U.S. Dep’t of Justice*, No. 08–2649, slip op. at 1 (Jan. 8, 2009) (temporary restraining order). On February 5, 2009, the Department solicited further public comment, with the comment period closing on April 6, 2009. 74 FR 6131.

As the Department reviewed the submitted comments, it considered further the statutory requirements governing the regulatory implementation of the chapter 154 certification procedures. The Attorney General determined that chapter 154 gave him greater discretion in making certification determinations than the 2008 regulations would have allowed. Therefore, the Department published a notice in the **Federal Register** on May 25, 2010, proposing to remove the 2008 regulations pending the completion of a new rulemaking process, during which the Department would further consider what procedures were appropriate. 75 FR 29217. The comment period closed on June 24, 2010. On November 23, 2010, the Department published a final rule removing the 2008 regulations. 75 FR 71353.

The Department published a new proposed rule on March 3, 2011. 76 FR 11705. The comment period closed on June 1, 2011. The Department published a supplemental notice of proposed rulemaking on February 13, 2012, which identified a number of possible changes the Department was considering based on comments received in response to the publication of the proposed rule. 77 FR 7559. The comment period closed on March 14, 2012.

#### Summary of Comments

About 60 comments were received on the proposed rule, including both comments received on the initial notice of proposed rulemaking and comments received on the supplemental notice of proposed rulemaking.

Some commenters urged the Department to publish, in effect, a third notice of proposed rulemaking so as to disclose the exact text of the final rule—particularly the language regarding the effect of compliance with benchmarks on certification—before its publication. However, the Department published the

full text of the proposed rule in the original notice of proposed rulemaking. 76 FR 11705. It also published a supplemental notice of proposed rulemaking to provide a further opportunity for public input on changes to the rule under consideration following initial comment. 77 FR 7559. The text of this final rule is the same as that published in the original notice of proposed rulemaking, except for five changes to that text that were precisely described in the supplemental notice, further clarifying amendments (affecting §§ 26.20, 26. 21, 26.22(b), (c), and (d), and 26.23(c)), and minor technical changes. All of the changes made to the text directly pertain to subjects and issues identified as under consideration by the terms of the original notice and supplemental notice and are responsive to the public comments received on those notices. The extensive comments received in response to the two publications confirm that interested members of the public were able to comment intelligently on the issues affecting the formulation of the final rule and in fact did so.

In the ensuing summary, comments that concern the general approach of the rule or that affect a number of provisions in the rule are discussed initially, followed by discussion of comments that pertain more specifically to particular provisions in the rule.

#### General Comments

##### *The Basic Approach of the Rule*

Two commenters argued that the Attorney General lacks authority to articulate substantive standards for chapter 154 certification, contending instead that chapter 154 limits the Attorney General to performing ministerial tasks when exercising his or her certification responsibilities. These comments are not well-founded. Chapter 154 is reasonably construed to allow the Attorney General to define within reasonable bounds the chapter’s requirements for certification, and to evaluate whether a State’s mechanism is adequate for purposes of ensuring that it will result in the appointment of competent counsel. The reasons for this conclusion are summarized in the OLC Opinion and elsewhere in this preamble.

Many commenters agreed that the Attorney General may appropriately specify and apply a substantive Federal standard that State mechanisms must meet to satisfy chapter 154’s requirements for certification, and this rule specifies that standard, within the limits of the statutory scheme it implements: (i) *Appointment*—Chapter

154 requires the Attorney General to certify “whether the State has established a mechanism for the appointment . . . of . . . counsel” in State capital collateral proceedings. This rule provides further specification regarding the statutory appointment procedures and discusses the express statutory provisions that require such appointments to occur in a reasonably timely fashion. (ii) *Competent Counsel*—Chapter 154 provides that the Attorney General must determine whether the State has established a mechanism for the appointment of “competent counsel” in State capital collateral proceedings, and “whether the State provides standards of competency for the appointment of counsel” in such proceedings. This rule provides two “benchmark” competency standards that are presumptively sufficient to warrant certification while still leaving States some leeway to adopt other standards so long as they reasonably assure a level of proficiency appropriate for State postconviction litigation in capital cases. (iii) *Compensation and payment of reasonable litigation expenses*—Chapter 154 additionally requires the Attorney General to determine whether the State has established a mechanism for the “compensation” and “payment of reasonable litigation expenses” of competent counsel in State capital collateral proceedings. This rule provides four benchmark compensation standards that are presumptively adequate while again leaving States some significant discretion to formulate alternative compensation schemes, if reasonably designed to ensure the availability and timely appointment of competent counsel. And as to all of these matters, this rule provides that the Attorney General will consider a State’s submission requesting certification and any input from interested parties received through a public comment procedure before determining whether certification is warranted.

Several commenters, however, argued that the certification standards and procedures promulgated in this rule (and described in the prior notice and supplemental notice of proposed rulemaking) do not go far enough in dictating the standards States must meet, or in providing for sufficient review and oversight by the Attorney General of State compliance with mechanisms for which certification is sought. For the reasons discussed generally below, and elsewhere in this preamble in the context of specific provisions of the rule, the Department

has not adopted the changes proposed by these commenters.

Some of these commenters urged that the rule incorporate counsel competency provisions that would have the effect of eliminating or largely displacing State discretion to develop, within appropriate bounds, mechanisms for ensuring that competent counsel are appointed. One commenter, for instance, proposed that the rule should prescribe uniform national competency standards that must be adopted by any and all States seeking certification. Other commenters contended that the rule should incorporate measures as to prior experience in capital and postconviction capital proceedings, specialized training, demonstrated competence according to performance standards, and removal of attorneys who fail to provide effective representation—and find deficient, without exception, any State system that does not incorporate *all* of these features. The Department did not accept these comments, believing that they risk conflict with the statutory scheme, which leaves room for States to formulate their own standards so long as they reasonably assure the availability and appointment of competent counsel. See OLC Opinion at \*12–13; see also 135 Cong. Rec. 24696 (1989) (report of the Judicial Conference’s Ad Hoc Committee on Federal Habeas Corpus in Capital Cases (“the Powell Committee report”) from which many of the relevant features of Chapter 154 derive, explaining that giving States “wide latitude to establish a mechanism that complies with [the statutory requirements]” is “more consistent with the federal-state balance”).

Raising another issue, several comments proposed that the rule require a showing of State compliance with its own established mechanism as a condition of certification. As envisioned by these comments, the Attorney General, when presented with a request for certification, would review a State’s record of appointments in individual cases to verify that the appointments were made in conformity with the State’s established mechanism. These comments were not adopted because the statutory scheme does not call for such case-specific oversight by the Attorney General of State compliance with a mechanism it has established.

Chapter 154 in its current formulation states two preconditions for the chapter’s applicability in a particular case: (1) As provided in section 2261(b)(1), “the Attorney General of the United States certifies that a State has established a mechanism for providing

counsel in postconviction proceedings as provided in section 2265”; and (2) as provided in section 2261(b)(2), “counsel was appointed pursuant to that mechanism, petitioner validly waived counsel, petitioner retained counsel, or petitioner was found not to be indigent.” Of these two functions, only the general certification function is assigned to “the Attorney General of the United States.” The case-specific function of ascertaining whether counsel was appointed pursuant to the certified mechanism is reserved to Federal habeas courts, which can address individual irregularities and decide whether the Federal habeas corpus review procedures of chapter 154 will apply in particular cases. If the commenters were correct in asserting that the Attorney General should withhold certification unless he or she finds that the State has complied with its established mechanism in every case, there would have been little need for Congress to have included section 2261(b)(2). Cf. *Ashmus v. Woodford*, 202 F.3d 1160, 1168 & n.13 (9th Cir. 2000) (chapter 154 designed to avoid case-by-case analysis of counsel’s competence by requiring binding appointment standards). Moreover, if a State establishes a new mechanism for appointment of competent counsel (in response to this rule and its articulation of benchmark standards) and requests at the outset that the Attorney General determine its adequacy, chapter 154 should not be read to foreclose certification simply because the Attorney General would not yet have a basis to examine the State’s compliance with the newly established system.

Though the Department rejects the suggestion that the Attorney General’s certification determination should depend on whether a State complies with its own mechanism in isolated cases, the question of whether a State has “established” a mechanism is a conceptually distinct matter that the statutory framework *does* charge the Attorney General with determining, see 28 U.S.C. 2265(a)(1)(A)–(B). The requirement of having “established” a mechanism consistent with chapter 154 presupposes that the State has adopted and implemented standards consistent with the chapter’s requirements concerning counsel appointment, competency, compensation, and expenses. Thus, the rule allows for the possibility that the Attorney General will need to address situations in which there has been a wholesale failure to implement one or more material elements of a mechanism described in a State’s certification submission, such as

when a State's submission relying on § 26.22(b)(1)(ii) in the rule points to a statute that authorizes a State agency to create and fund a statewide attorney monitoring program, but the agency never actually expends any funds, or expends funds to provide for monitoring of attorneys in only a few of its cities. Addressing any such situations would require careful consideration of the specific features of a mechanism presented for certification, and is therefore best left to individual certification decisions. Other than in these situations, should they arise, questions of compliance by a State with the standards of its capital counsel mechanism will be a matter for the Federal habeas courts.

Finally, a few of the comments could be read to suggest that chapter 154 requires the Attorney General to certify a State mechanism only if he or she examines and is satisfied by the actual performance of postconviction counsel following appointment. On such an understanding, an assessment by the Attorney General of the performance of attorneys in State habeas proceedings (e.g., what investigation was done or not done, or what arguments were made or not made in a habeas petition) would inform a decision as to whether the State's mechanism adequately provides for appointment of competent postconviction counsel and, accordingly, whether chapter 154 certification is warranted. To the extent that the comments urged such an interpretation, it was rejected in formulating the rule.

The actual requirements under chapter 154 relating to counsel competency are establishment by a State of "a mechanism for the appointment . . . of competent counsel" in State capital collateral proceedings, and provision by the State of "standards of competency for the appointment of counsel" in such proceedings. Neither of these provisions suggests that the Attorney General is required to inquire into the facts of how counsel performed following appointment in all or some subset of cases. Rather, both frame their requirements regarding counsel competency as matters relating to appointment, and are naturally understood as contemplating an inquiry into whether a State has put in place adequate qualification standards that counsel must meet to be eligible for appointment. This understanding is supported by the Powell Committee report. The report explained that Federal review would examine whether a State's mechanism for appointing capital postconviction counsel comports with the statutory requirements "as

opposed to the competency of particular counsel." 135 Cong. Rec. 24696 (1989). It further explained that, in contrast to the focus on "the performance of a capital defendant's trial and appellate counsel," "[t]he effectiveness of state and federal postconviction counsel is a matter that can and must be dealt with in the appointment process." *Id.*

#### *The Role of the Attorney General*

Some commenters asserted that the Attorney General has an inherent conflict of interest that should disqualify him from making certification determinations under chapter 154. These commenters claimed that the Attorney General's prosecutorial functions and responsibilities would render him unable to objectively evaluate State capital counsel systems. The remediation proposed by these commenters included the suggestion that the Attorney General delegate his functions under chapter 154 to some other official or division within the Department of Justice that the commenters believed would be free of the supposed conflict of interest. Commenters also proposed that the Attorney General only exercise his certification responsibilities on the basis of very specific, inflexible criteria that would leave no room for judgment or discretion by the Attorney General in evaluating a given State system under chapter 154.

As an initial matter, the Attorney General cannot refrain from carrying out the functions assigned to him by chapter 154: The law requires him to discharge those functions. Congress assigned the certification function to the Attorney General after having heard arguments concerning a purported conflict of interest similar to those now advanced by the commenters. *See* 28 U.S.C. 2265(a)(1); *Habeas Reform: The Streamlined Procedures Act: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 26–27 (2005); *see also id.* at 54 (written statement of Professor Eric M. Freedman on behalf of the American Bar Association) ("The Attorney General is the nation's chief *prosecutor* and thus is hardly an appropriate officer to decide whether a state has kept its part of the 'opt in' bargain."). Moreover, the enactment of chapter 154 is not the first time that Congress has assigned to the Attorney General the task of evaluating State efforts to provide attorney representation to petitioners convicted of a capital crime. For example, the Innocence Protection Act of 2004, Public Law 108–405, Title IV, Subtitle B, 118 Stat. 2260, 2286–92 (2004) ("IPA"), contemplates the administration by the Attorney General

of a program to improve the quality of legal representation provided to indigent petitioners in State capital cases, including the making of grants to States willing to implement federally prescribed capital counsel standards, continuing oversight of the capital defense systems of States that accept funding, and negotiation or direction by the Attorney General of corrective actions needed to secure compliance by those States with the federally prescribed capital counsel requirements. *See* 42 U.S.C. 14163, 14163c–14163d; 151 Cong. Rec. E2640 (daily ed. Dec. 22, 2005) (extension of remarks of Rep. Flake) (noting as precedent for chapter 154 responsibilities of the Attorney General that "[j]ust last year . . . Congress assigned the Attorney General to evaluate State . . . capital counsel systems" under the IPA).

More fundamentally, there is no sound basis for the claim that the Attorney General has a conflict of interest that would preclude him from fairly carrying out the functions assigned to him by Congress. The criteria the Attorney General will apply in deciding whether a State has satisfied the chapter 154 requirements do not control what will be deemed constitutionally effective or ineffective assistance of counsel in the criminal cases for which the Attorney General is responsible. Addressing questions concerning what constitutes constitutionally effective assistance calls for an assessment of an attorney's performance in a given case, and as already noted, the Attorney General will not make such independent assessments in the context of making certification decisions under chapter 154, which call instead for an evaluation of general competency standards put in place by a State mechanism. Hence, there is no basis to conclude that the determinations that the Attorney General must make when presented with a request for certification of a State mechanism would conflict with the conduct of the Attorney General's prosecutorial functions.

Moreover, the functions performed by the Attorney General in his criminal law enforcement and prosecutorial oversight capacities are only part of the broader, diverse range of duties he regularly performs. The Department, under the Attorney General's supervision, administers and carries out programs for the improvement of indigent criminal defense systems, both generally and with respect to capital cases in particular. *See, e.g.,* Bureau of Justice Assistance, U.S. Dep't of Justice, *Answering Gideon's Call: Improving Indigent Defense Delivery Systems, FY*

2012 Competitive Grant Announcement (April 4, 2012); Bureau of Justice Assistance, U.S. Dep't of Justice, *Capital Case Litigation Initiative, FY 2011 Competitive Grant Announcement* (Jan. 11, 2011); Bureau of Justice Assistance, U.S. Dep't of Justice, *Capital Case Litigation Initiative*, [http://www.bja.gov/ProgramDetails.aspx?Program\\_ID=52](http://www.bja.gov/ProgramDetails.aspx?Program_ID=52) (last visited July 23, 2013) (further information on capital case litigation initiative); U.S. Dep't of Justice, *The Access to Justice Initiative*, <http://www.justice.gov/atj> (last visited July 23, 2013) (home page for the Department's Access to Justice Initiative, which seeks to "increase access to counsel and legal assistance," including by advancing "new statutory, policy, and practice changes that support development of quality indigent defense"). The Attorney General leads and convenes the Federal Interagency Reentry Council, a government-wide effort to improve employment, housing, treatment, and educational opportunities for individuals who were previously incarcerated. The Department of Justice also handles much of the Federal government's civil litigation under the Attorney General's authority, in some cases serving as or representing the plaintiff and in others serving as or representing the defendant. In addition, the Attorney General oversees the Department's Community Relations Service, which provides violence prevention and conflict resolution services to State and local governments, private organizations, and community groups. These examples demonstrate that the Attorney General is accustomed to appropriately balancing varied and occasionally competing interests in the exercise of his duties. Thus, even if carrying out the certification function assigned to him by law did affect the Department's criminal enforcement efforts (though it does not), the commenters have made no persuasive showing that the Attorney General would be unable to fairly evaluate a State's certification request.

In addition, discharge of the required chapter 154 functions by the Attorney General is consistent with Rule 1.7(a)(2) of the American Bar Association ("ABA") Model Rules of Professional Conduct (and comparable rules adopted by most State supreme courts), which provides in relevant part that "a lawyer shall not represent a client if . . . there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer."

The Attorney General has no responsibilities to a client that would materially limit the discharge of the chapter 154 certification function, because the Attorney General's only relevant client is the United States, which through Congress has expressly directed the discharge of that function by law. There is also no reason to believe that the Attorney General has any responsibility to a "former client" or "third person," or any "personal interest," that would materially impair his representation of the United States in the discharge of that function. The Attorney General has a professional obligation to abide by the "client's decisions concerning the objectives of representation," ABA Model Rule 1.2(a), making it difficult to conceive how the Attorney General could have such a disqualifying conflict in representing the United States when it is the United States that has mandated through its laws that the Attorney General carry out the chapter 154 certification function.

Against this background, there is no force to the claim of some commenters that the Attorney General has an inherent conflict of interest in carrying out his legal duties under chapter 154—which potentially affects defense and judicial review functions in criminal cases for which the Attorney General is not responsible—because the Attorney General oversees the conduct of prosecutions in Federal criminal cases, among other duties. Modification of the rule to incorporate the remedial measures proposed by these commenters is accordingly not necessary because the underlying assumption of a conflict of interest is not well-founded. Indeed, the specific remedy suggested by many of these commenters, that the Attorney General address the purported conflict of interest by delegating the certification function to the Department's Inspector General, would itself pose problems. Among others, the task of certifying State capital counsel mechanisms falls outside the current duties, responsibilities, and expertise of the Inspector General and his staff, which focus on fraud, waste, and abuse in the Department of Justice, *see* 5 U.S.C. App. 3 sections 4, 8E.

#### *Relationship to Prior Judicial Interpretation*

Some commenters criticized the rule as inconsistent with the judicial construction of chapter 154. However, prior judicial interpretation of chapter 154, much of which remains generally informative, supports many features of this rule, as this preamble documents. To the extent the rule approaches

certain matters differently from some past judicial decisions, there are reasons for the differences.

One reason judicial decisions could not consistently be followed on some matters in this rule is that the decisions were not in accord with each other on these matters. For example, as discussed below in connection with § 26.22(b) of the rule, some district court decisions regarded prior capital litigation experience as necessary to qualify for appointment under chapter 154, but appellate precedent and other authority permit a more flexible approach that would understand capital litigation experience to be relevant and often helpful, but not indispensable.

Textual changes that Congress has made in chapter 154 are another reason for differences from prior judicial decisions under chapter 154. For example, as explained below in the analysis statement accompanying § 26.21 in this rule, chapter 154 originally had separate provisions for State systems bifurcating direct and collateral review (28 U.S.C. 2261 (2000) (amended 2006)) and State "unitary review" systems in which collateral claims may be raised in the course of direct review (28 U.S.C. 2265 (2000) (amended 2006)). Both sets of provisions included language specifying the form that State standards establishing the required capital counsel mechanism must take. The general provisions in former section 2261(b) required that a State establish the mechanism "by statute, rule of its court of last resort, or by another agency authorized by State law." The provisions in section 2265(a) for unitary review procedures required that a State establish the mechanism "by rule of its court of last resort or by statute." Both sections said that "[t]he rule of court or statute must provide standards of competency for the appointment of . . . counsel."

In *Ashmus v. Calderon*, the court concluded that the State unitary review procedure under review in that case did not satisfy chapter 154, in part because the State's qualification standards for appointment of capital counsel were not set out in a "rule of court" in the relevant sense. 123 F.3d 1199, 1207–08 (9th Cir. 1997). This particular ground for denying chapter 154 certification no longer exists under the current formulation of chapter 154. The amendments to chapter 154 enacted in 2006 replaced the separate provisions for bifurcated and unitary review procedures with uniform requirements that apply to all State systems and eliminated the former language specifying that the relevant standards

were to be provided by rule of court or statute.

This rule accordingly does not include a requirement that relevant State standards must be adopted by any particular means, notwithstanding the judicial application of such a requirement when the statutory language was different. While States still must establish capital counsel mechanisms that satisfy the chapter 154 requirements to be certified, there is no requirement that they do so in any particular form, such as only through standards set out in rules of court. So long as there has been an authoritative adoption or articulation by a State of binding standards, and those standards are not otherwise negated or overridden by State policy, the standards are “established” for the purposes of chapter 154.

Other differences reflect the change in responsibility for chapter 154 certification under the 2006 amendments. Prior to those amendments, requests to invoke the chapter 154 procedures were presented to Federal habeas courts in the context of particular State capital cases they were reviewing. Courts in that posture considered both whether the State had established a mechanism satisfying chapter 154, and if so, whether counsel for the petitioner in the particular case before them had been provided in full compliance with that mechanism. Hence, if counsel had not been appointed on collateral review in a particular case, or if the attorney provided did not satisfy the State’s competency standards for such appointments, for example, the courts could find chapter 154 inapplicable on that basis, regardless of whether the State had established a capital counsel mechanism that otherwise satisfied the requirements of chapter 154. *See, e.g., Tucker v. Catoe*, 221 F.3d 600, 604–05 (4th Cir. 2000) (“We accordingly conclude that a state must not only enact a ‘mechanism’ and standards for postconviction review counsel, but those mechanisms and standards must in fact be complied with before the state may invoke the time limitations of 28 U.S.C. 2263.”).

The result in such a case is not necessarily different under the current formulation of chapter 154, but the route to that result is not the same. In entertaining a State’s request for chapter 154 certification, the Attorney General has no individual case before him and is not responsible for determining whether a State has complied with its mechanism in any particular case. Rather, as discussed above, 28 U.S.C. 2261(b)(1) assigns to the Attorney

General the general certification function under chapter 154, which makes him responsible for determining whether a mechanism has been established by the State and whether the State provides standards of competency. If the State mechanism is certified, appointment of counsel pursuant to the certified mechanism (absent waiver or retention of counsel or a finding of non-indigence) continues to be a further condition for the applicability of chapter 154. But whether that has occurred in any individual case is, under 28 U.S.C. 2261(b)(2), a matter within the province of the Federal habeas court to which the case is presented, not the Attorney General.

#### Section 26.20—Purpose

A comment on this section as drafted in the proposed rule objected that it did not mention the condition for chapter 154’s applicability appearing in 28 U.S.C. 2261(b)(2). While the section 2261(b)(2) requirement was noted in the preamble to the proposed rule, *see* 76 FR at 11706, 11710–11, the objection is well-taken. The final text of § 26.20 reflects explicitly that the applicability of the Federal habeas corpus review procedures of 28 U.S.C. 2262, 2263, 2264, and 2266 in a capital case depends on both certification of the State’s postconviction capital counsel mechanism, as provided in 28 U.S.C. 2261(b)(1), and appointment of counsel pursuant to the certified mechanism (absent waiver or retention of counsel or a finding of non-indigence), as provided in 28 U.S.C. 2261(b)(2).

#### Section 26.21—Definitions

##### *Appointment*

Many comments raised the concern that the proposed rule did not address the timing of counsel appointment. The concern reflected the general importance of the timely availability of counsel in the context of a complex and difficult type of litigation and specific issues arising from chapter 154’s special time limit for Federal habeas filing. *Compare* 28 U.S.C. 2263 (general 180-day time limit under chapter 154) *with* 28 U.S.C. 2244(d) (one-year time limit otherwise applicable).

The Department believes that the concern reflected in these comments is well-founded. Chapter 154 involves a *quid pro quo* arrangement under which appointment of counsel for indigents is extended to postconviction proceedings in capital cases, and in return, subsequent Federal habeas review is carried out with generally more limited time frames and scope. *See, e.g., H.R. Rep. No. 104–23*, at 10 (1995) (noting

the chapter’s “quid pro quo arrangement under which states are accorded stronger finality rules on Federal habeas review in return for strengthening the right to counsel for indigent capital defendants”). The Powell Committee report, from which this essential feature of chapter 154 derives, explained that “[c]apital cases should be subject to one complete and fair course of collateral review in the state and federal system . . . with the assistance of competent counsel for the defendant” and that “[t]he belated entry of a lawyer, under severe time pressure, does not do enough to ensure fairness.” 135 Cong. Rec. 24695 (1989).

The quid pro quo arrangement of chapter 154 requires provision of counsel to capital petitioners in State postconviction proceedings in return for Federal habeas review carried out with generally more limited time frames and scope. Against this background, not every conceivable provision for making postconviction counsel available, however belatedly—e.g., only after the deadline for pursuing State postconviction proceedings had passed; or only after the expiration of section 2263’s time limit for Federal habeas filing; or only after such delay that the time available for preparing for and pursuing either State or Federal postconviction review had been seriously eroded—can logically be regarded as providing for appointment of counsel within the meaning of chapter 154. Consistent with such considerations, judicial decisions under chapter 154 that addressed the matter concluded that the State mechanism must provide for timely appointment of counsel. *See, e.g., Brown v. Puckett*, No. 3:01CV197–D, 2003 WL 21018627, at \*3 (N.D. Miss. Mar. 12, 2003) (“The timely appointment of counsel at the conclusion of direct review is an essential requirement in the opt-in structure. Because the abbreviated 180-day statute of limitations begins to run immediately upon the conclusion of direct review, time is of the essence. Without a requirement for the timely appointment of counsel, the system is not in compliance.”); *Ashmus v. Calderon*, 31 F. Supp. 2d 1175, 1187 (N.D. Cal. 1998) (“The quid pro quo would be hollow indeed if compliance by the state was satisfied by merely offering and promising to appoint competent counsel with no element of timeliness.”); *Hill v. Butterworth*, 941 F. Supp. 1129, 1147 (N.D. Fla. 1996) (“[T]he Court holds that any offer of counsel pursuant to Section 2261 must be a *meaningful offer*. That is, counsel must be immediately appointed after a

capital defendant accepts the state's offer of postconviction counsel."), *rev'd on other grounds*, 147 F.3d 1333 (11th Cir. 1998).

The supplemental notice of proposed rulemaking accordingly proposed specifying more clearly that an adequately functioning mechanism, as described in chapter 154, will necessarily incorporate a policy for the timely appointment of competent counsel. *See* 77 FR at 7560–61. Section 26.21 of the final rule does so by adding a definition of appointment that clarifies that it entails “provision of counsel in a manner that is reasonably timely in light of the time limitations for seeking State and Federal postconviction review and the time required for developing and presenting claims in the postconviction proceedings.” *See* American Bar Association, *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, at 127 (rev. ed. Feb. 2003), available at <http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/deathpenaltyguidelines2003.authcheckdam.pdf> (“ABA Guidelines”) (increasingly intertwined nature of State and Federal habeas proceedings means that “although the AEDPA deals strictly with cases being litigated in federal court, its statute of limitations provision creates a de facto statute of limitations for filing a collateral review petition in state court”).

Nevertheless, two comments responding to the supplemental notice objected to this change from the proposed rule as inconsistent with the current version of chapter 154, which provides that “[t]here are no requirements for certification or for application of this chapter other than those expressly stated in this chapter.” 28 U.S.C. 2265(a)(3). However, the definition of appointment in § 26.21 does not add to the express requirements for certification. Rather, as explained above, it reflects a contextual understanding of chapter 154’s express requirement of a mechanism for appointment of competent postconviction capital counsel, *see* 28 U.S.C. 2265(a)(1), to encompass some standard for affording postconviction representation in a manner that is reasonably timely in light of the relevant postconviction review time limitations and the time required for developing and presenting claims. *See* OLC Opinion at \*8 (“In reasonably construing an ambiguous term in a statute that he is charged with administering, the Attorney General would not be adding to the requirements for certification . . . [but]

merely would be implementing an express statutory provision . . . just as agency officials regularly do in other contexts” under *Chevron, U.S.A., Inc. v. Natural Res. Defense Council, Inc.*, 467 U.S. 837, 844 (1984).).

Other features of chapter 154 provide additional textual support for the final rule’s definition of “appointment” and confirm it is consistent with the express statutory scheme, including section 2265(a)(3). Section 2262(a), for instance, provides for an automatic stay of execution, by application to a Federal habeas court, upon entry of an order appointing counsel. If chapter 154 permitted a State to delay appointment of counsel, an execution that is scheduled for a date shortly after the denial of a prisoner’s direct appeal could occur before the prisoner receives the State postconviction counsel and the automatic stay that chapter 154 promises. Likewise, chapter 154 expressly contemplates that States will establish, and the Attorney General will review, standards expected to produce competent representation by appointed counsel. 28 U.S.C. 2265(a)(1)(A), (C). Judgments concerning what competency standards are needed may well vary based on expectations about the amount of time an attorney will have to perform requisite tasks. The need for counsel to be appointed in a reasonably timely fashion, especially in light of the relevant statutory deadlines for seeking habeas relief, sets such expectations and enables the judgments that the statutory framework requires.

The two concerned commenters also cite legislative history evidence, specifically two floor statements criticizing the Ninth Circuit’s decision in *Spears v. Stewart*, 283 F.3d 992 (9th Cir. 2001), in support of their objection to the articulation in this rule of chapter 154’s requirement that appointments be made in a reasonably timely fashion. *See, e.g.*, 152 Cong. Rec. S1625 (daily ed. Mar. 2, 2006) (statement of Sen. Kyl, the sponsor of the amendment, including that it “forbids creation of additional requirements not expressly stated in the chapter, as was done in the *Spears* case”); 151 Cong. Rec. E2639 (daily ed. Dec. 22, 2005) (extension of remarks of Rep. Flake). However, the legislators’ criticism of the *Spears* decision does not support the commenters’ objection to the rule’s articulation of chapter 154’s timeliness requirement. *Spears* addressed an issue concerning the timing of appointment of capital collateral counsel in two contexts, finding first that a rule adopted by the Arizona Supreme Court did adequately provide for timely appointment of counsel, but then

declining to apply the chapter 154 Federal habeas review procedures in that particular case on the ground that counsel was not appointed within the time frame called for by the mechanism. *Compare Spears*, 283 F.3d at 1017 (“We conclude that the Arizona statutory mechanism for the appointment of postconviction counsel [requiring appointment within 15 days of notice that the conviction had become final] . . . offered counsel to all indigent capital defendants . . . in a timely fashion.”), *with id.* at 1018–19 (holding that chapter 154 did not apply “in Petitioner’s case” because his attorney was appointed over a year after the mechanism’s deadline). The object of the dissatisfaction expressed in the floor statements upon which the two commenters rely was neither the positive determination in *Spears* regarding the need for a timing component in a State’s mechanism nor the adequacy of Arizona’s timing provision for purposes of chapter 154, but rather the denial to the State of the benefits of chapter 154 in that individual case. *See* 152 Cong. Rec. S1625 (daily ed. Mar. 2, 2006) (statement of Sen. Kyl); 151 Cong. Rec. E2639–40 (daily ed. Dec. 22, 2005) (extension of remarks of Rep. Flake).

The Attorney General’s current role under chapter 154 parallels that of the *Spears* court in making the first of these two determinations—whether the mechanism in force in the State adequately provides for the reasonably timely appointment of counsel. Nothing in the present rule would bar the Attorney General from approving, as the *Spears* court did, a State mechanism that provides for timely provision of counsel. Whether and in what circumstances a delay in appointment of counsel would affect chapter 154’s applicability in an *individual* case may be considered by Federal habeas courts in the exercise of their function under 28 U.S.C. 2261(b)(2), and is not a question that the statute assigns to the Attorney General.

In any event, courts ordinarily give floor statements, even statements made by the sponsor of a bill or amendment, relatively limited weight in analyzing Congress’s intent. *See, e.g., Garcia v. United States*, 469 U.S. 70, 76 (1984). This is appropriate in the case of the legislation that added section 2265(a)(3) to chapter 154 because the commenters principally rely on views expressed by a Senator that were not included in the bill’s conference report, *compare* H.R. Rep. No. 109–333, at 109–10 (2005) (Conf. Rep.) (making no reference to the timing of appointments, and identifying not *Spears*, but a different case that

involved a different issue as being “overruled” by the bill’s provisions), with 152 Cong. Rec. S1625 (daily ed. Mar. 2, 2006) (statement of Sen. Kyl). See *Ctr. for Sci. in the Pub. Interest v. Regan*, 802 F.2d 518, 523 (D.C. Cir. 1986) (noting that “the contemporaneous remarks of a single legislator, even a sponsor, are not controlling in legislative history analysis; rather, those remarks must be considered along with other statements and published committee reports”). Thus, even if the commenters’ reading of the floor statements’ criticism of *Spears* were correct, the statements should not be treated as controlling or as indicative of congressional intent contrary to the rule’s clarification of a requirement for reasonably timely appointment of counsel.

With respect to a separate but related issue, one commenter suggested that § 26.21’s definition of “appointment” to encompass a timeliness element is unnecessary because courts may alternatively address problems under chapter 154 resulting from delay in providing postconviction counsel by adjusting the operation of the relevant time limits for filing. The commenter cited *Rhines v. Weber*, 544 U.S. 269 (2005), and *In re Morgan*, 50 Cal. 4th 932, 237 P.3d 993 (2010), for support.

As an initial matter, it is unclear to what extent these cited cases apply to the issue at hand. *Rhines*, for example, involved stay-and-abey procedures that may not be available to petitioners under chapter 154, see 28 U.S.C. 2264(b), and *Morgan* focused on the viability of pro se “shell” State habeas petitions—a practice that, even if it were firmly established and accepted by both State and Federal courts, raises significant concerns in the chapter 154 context. As a practical matter, for example, not every State petitioner will be in a position to understand the necessity for filing such a petition and able to file a petition successfully. Moreover, chapter 154 contemplates that in exchange for substantial benefits on Federal habeas review, States will provide not the opportunity for petitioners to file pro se State habeas petitions, but the opportunity for petitioners to file counseled State habeas petitions. See *Mills v. Anderson*, 961 F. Supp. 198, 201 n.4 (S.D. Ohio 1997) (questioning whether State mechanism that provides for appointment of counsel only after filing of pro se petition is inadequate under chapter 154). Thus, the relevance of the procedures discussed in *Rhines* and *Morgan* is uncertain. Even if available in this context, they would at most affect what might be thought necessary to

reasonably assure the timely appointment of counsel. The possible existence of such procedures would not undermine the conclusion that the “appointment” required under chapter 154 must be made in a reasonably timely manner, as reflected in the definition in § 26.21.

Some commenters approved of the rule’s specification of the requirement for timely appointment but stated that it should provide a more definite period of time (e.g., a specific number of days or weeks) within which State mechanisms must appoint counsel. The Department believes, however, that States must have significant latitude in designing mechanisms for ensuring that competent counsel are appointed, see OLC Opinion at \*12–13, and this rule therefore does not define timeliness in terms of a specific number of days or weeks within which counsel is to be provided. Instead, a State need only demonstrate that it has established a mechanism for affording counsel in a manner that is reasonably timely, in light of the time limits for seeking State and Federal collateral review and the effort involved in the investigation, research, and filing of effective habeas petitions, which protect a petitioner’s right to meaningful habeas review.

Additionally, some commenters urged that the rule should require that appointment of postconviction capital counsel be timely in relation to the petitioner’s conviction, not just in relation to the time limits for seeking State and Federal postconviction review and the time required for preparing postconviction claims. The rationale offered for this proposal was that direct review of the judgment in capital cases, occurring between the end of the trial proceedings and the commencement of postconviction proceedings, may take a long time, and that evidence and records that would be useful to the defense in postconviction proceedings may be lost in the meantime. While the Department does not question the value of efforts to avoid spoliation of evidence, consideration can be given only within the statutory framework; to the extent these commenters contemplated requiring that postconviction counsel be appointed even before the conclusion of direct review, such a mandate would appear to go beyond chapter 154’s requirements for appointment of counsel “in State postconviction proceedings.” 28 U.S.C. 2265(a)(1); see *id.* 2261(b)(1).

#### *Appropriate State Official*

Section 26.21 of the rule, in part, defines an “appropriate State official” who may request chapter 154

certification under 28 U.S.C. 2265(a)(1) to mean the State attorney general or the State chief executive if the State attorney general does not have responsibility for Federal habeas corpus litigation. Some commenters objected to the rule’s designation of the State attorney general as the appropriate official to request chapter 154 certification on grounds of conflict of interest, lack of relevant knowledge, interference with State discretion, and exceeding statutory authority.

The comments received provided no persuasive reasons for changing the definition of “appropriate State official” in § 26.21. First, the objection that the State attorney general’s litigation interests may lead him to make unsound judgments whether his State has satisfied chapter 154’s requirements conflates the role of applicant and that of decision-maker. Under this rule, the State attorney general is authorized to request certification, but it will be the U.S. Attorney General who makes a wholly independent determination of whether certification is warranted. In making this determination, the U.S. Attorney General will consider any supporting or contrary information or views that any interested entity may choose to submit through the public comment procedure set out in § 26.23 of the rule, in addition to whatever the State attorney general may offer on the question.

Second, designation of the State attorney general as the “appropriate State official” is consistent with both the original language of chapter 154 and the 2006 amendments. Prior to the 2006 amendments, Federal habeas courts determined whether chapter 154’s requirements were satisfied, so State attorneys general responsible for Federal habeas corpus litigation in capital cases were able to seek determinations that the State capital counsel mechanism satisfied the chapter 154 requirements as part of their litigation functions. The court, not the State attorney general, was the decision-maker on that question, and the court’s decision was informed by hearing the views of others with opposed interests, in addition to those of the State attorney general. The transfer of the chapter 154 certification function from the Federal courts to the U.S. Attorney General does not materially change this framework. The State attorney general is authorized to seek certification; the U.S. Attorney General, not the State attorney general, is the decision-maker; and the U.S. Attorney General will consider any views proffered by others as discussed above.

Third, the Attorney General's decisions regarding chapter 154 certification are subject to de novo review by the D.C. Circuit Court of Appeals, as provided in 28 U.S.C. 2265(c), and seeking such review would commonly be within the litigation authority of the State attorney general, regardless of which official had sought the initial determination from the U.S. Attorney General. It would be odd to deem the State attorney general an inappropriate official to seek chapter 154 certification from the U.S. Attorney General in the first instance, where the statutes interpose no obstacle to State attorneys general seeking the same determination from the D.C. Circuit at a later stage.

Fourth, the objection regarding lack of relevant knowledge by the State attorney general is also unpersuasive. This objection in the comments appears to be premised largely on the belief that States seeking certification will normally submit with their request a set of comprehensive data that demonstrate the operation of the State's collateral review system in capital cases, including such matters as the amount of awards to defense counsel for litigation expenses in particular cases, of which the State attorney general might in some cases be unaware. The proposition that the Attorney General must conduct such a case-by-case review under chapter 154 is not well-founded, for reasons discussed earlier in this preamble. Additionally, the Department finds it significant that none of the commenters identified a person in a State likely to have better knowledge than the State attorney general or chief executive concerning matters relevant to certification. Thus, even if it is accepted that a State attorney general may not have perfectly complete information in every instance, there is no basis to believe that there is an alternative official or individual better suited to the task. Moreover, if at times there is information relevant to the U.S. Attorney General's determination that the State attorney general may not have, any interested person is free to provide such information through the public comment procedure for certification requests set out in § 26.23(b)–(c) in this rule.

Finally, the objection in the present comments regarding potential conflict with State law reflects a misunderstanding of the rule, which does not preempt State law. If State law were to prohibit a State attorney general from requesting chapter 154 certification, then the State attorney general would be barred by State law from making such a request. That has no

bearing on the formulation of § 26.21, which only defines the class of State officials whose request for chapter 154 certification triggers the requirement under 28 U.S.C. 2265(a)(1) that the U.S. Attorney General make a chapter 154 certification decision. Moreover, any concern about potential conflict with State law is purely speculative. No State submitted comments on this rule stating that it has prohibited, wishes to prohibit, or may prohibit the State attorney general from requesting chapter 154 certification on behalf of the State.

#### **Section 26.22(a)—Statutory Requirements Concerning Appointments**

Section 26.22(a) tracks chapter 154's provisions concerning the procedures for appointment of counsel, appearing in 28 U.S.C. 2261(c)–(d). Some commenters stated that the rule should be modified to provide additional definition concerning these procedures, such as specifying in greater detail what constitutes a sufficient offer of counsel, or what exactly will or will not be deemed a valid waiver of counsel, under these provisions.

The comments received did not provide persuasive reasons for addressing additional interpretive issues in this rule. Chapter 154's legal directive to the Attorney General regarding rulemaking is that the Attorney General "shall promulgate regulations to implement the certification procedure under [section 2265(a)]," 28 U.S.C. 2265(b). Some of the specific matters raised in the comments have been addressed by courts in prior decisions relating to chapter 154, but there is no requirement that the present rule attempt to provide a comprehensive restatement or synthesis of all past judicial decisions under the chapter. Though the Attorney General has provided further definition of the chapter 154 requirements in § 26.22 of this rule, in the interest of affording additional guidance regarding what must be done to qualify for certification under chapter 154 and what criteria will be applied in making certification decisions, that does not oblige the Attorney General to go further and attempt to resolve in this rule (even if it were possible) all possible questions that might arise in the interpretation and application of chapter 154's requirements.

It is uncertain whether particular interpretive questions raised by the commenters will prove to be significant issues in the context of the capital counsel systems of States that actually apply for certification hereafter. If they do not, then little will have been gained

by the Attorney General's attempt to resolve them in advance. If they do prove to be significant issues, considering them in the concrete setting of State systems whose certification is requested is likely to be more conducive to sound resolutions than trying to address them in the abstract.

#### **Section 26.22(b)–(c)—General Issues**

Paragraphs (b) and (c) in § 26.22 articulate the requirements relating to counsel competency and compensation. Each paragraph consists of "benchmark" provisions identifying standards that presumptively will be considered adequate (§ 26.22(b)(1) for competency and § 26.22(c)(1) for compensation), followed by general provisions for assessing State standards that take other approaches (§ 26.22(b)(2) for competency and § 26.22(c)(2) for compensation).

The text of the rule published in the notice of proposed rulemaking stated without qualification that the Attorney General *will* approve State standards satisfying the benchmark provisions. Many commenters expressed the concern that, under the proposed rule, the Attorney General could have been required to certify a State's mechanism meeting the competence and compensation benchmarks, even if it could be shown that the mechanism is not adequate in the context of the State system in which it operates.

The Department continues to believe that State mechanisms that incorporate the benchmark standards for competency and compensation should be adequate. However, the comments were persuasive that it is not possible to predict with certainty that these benchmarks will be adequate in the context of every possible State system. For example, it is conceivable that a State standard authorizing what normally should be sufficient compensation may not in fact make competent lawyers available for appointment in postconviction proceedings, considering the context of a particular State system and its distinctive market conditions for legal services. *Cf. Baker v. Corcoran*, 220 F.3d 276, 285–86 (4th Cir. 2000) (considering per-attorney overhead costs and effective compensation rates among other factors in finding compensation scheme inadequate under chapter 154). The final rule has accordingly been modified, as discussed in the supplemental notice of proposed rulemaking, to provide that State standards satisfying the benchmarks for competency and compensation are *presumptively* adequate, thereby affording latitude to consider State-

specific circumstances that may establish the contrary—i.e., that standards generally expected to be sufficient in most instances are for some reason not reasonably likely to lead to the timely provision and adequate compensation of competent counsel to habeas petitioners in a particular State. 77 FR at 7561.

Importantly, however, the Department found unpersuasive commenters' separate criticism that the proposed rule fails to provide for oversight of a State's compliance with a chapter 154 mechanism that it has established. As explained earlier in this preamble, the Department remains of the view that chapter 154 is correctly read to assign to the Federal habeas courts—not to the Attorney General—questions concerning whether a State has fully complied in a given case with the requirements of its own established mechanism.

#### **Section 26.22(b)(1)(i)—Counsel Competency Standards Based on 18 U.S.C. 3599**

Section 26.22(b)(1)(i) in the final rule sets forth competency standards requiring at least five years of bar admission and three years of postconviction litigation experience, or if a State mechanism so provides, allowing appointment for good cause in a given case of other counsel whose background, knowledge, or experience would otherwise enable him or her to properly represent the petitioner. Section 26.22(b)(1)(i) is based on the qualification standards Congress has adopted in 18 U.S.C. 3599 for appointment of counsel in Federal court proceedings in capital cases. The formulation of this provision in the final rule to require three years of postconviction litigation experience differs from the corresponding provision in the proposed rule, which required three years of felony litigation experience, without specification of the stage or stages of litigation at which the experience was obtained. The reasons for this change are explained below.

In response to the proposed rule, many commenters suggested that postconviction litigation experience would be a better measure of competency for State postconviction proceedings than general felony litigation experience because of the difficult and unique demands that postconviction law and procedure place on attorneys who litigate those cases. These comments were persuasive.

In construing chapter 154, some courts have concluded that, given the complexity of postconviction law and procedure, a qualifying mechanism for the appointment of competent counsel

should provide for counsel with specialized postconviction litigation experience. *See, e.g., Colvin-El v. Nuth*, No. Civ.A. AW 97–2520, 1998 WL 386403, at \*6 (D. Md. July 6, 1998) (“Given the extraordinarily complex body of law and procedure unique to postconviction review, an attorney must, at minimum, have some experience in that area before he or she is deemed ‘competent.’”); *see also* Jon B. Gould & Lisa Greenman, *Report to the Committee on Defender Services, Judicial Conference of the United States: Update on the Cost and Quality of Defense Representation in Federal Death Penalty Cases* 88 (Sep. 2010) (noting the view of postconviction specialists that there is “little time available for inexperienced counsel to ‘learn the ropes,’ and no safety net if they fail”). Several States have also incorporated this guidance into their appointment standards. *See, e.g.,* La. Admin. Code tit. 22, 915(D)(1)(e)(i) (requiring that qualified postconviction lead counsel shall “have at least five years of criminal postconviction litigation experience.”); Miss. R. App. P. 22(d)(5) (generally requiring prior experience in at least one postconviction proceeding for appointment); Mo. Ann. Stat. § 547.370(2)(3) (requiring at least one of two appointed counsel to have “participated as counsel or co-counsel to final judgment in at least five postconviction motions involving class A felonies in either state or federal trial courts”). The adaptation of the section 3599 standard in the final rule accordingly specifies three years of postconviction litigation experience, rather than three years of any sort of felony litigation experience as in the proposed rule.

The formulation of this benchmark in the final rule to require postconviction experience does not take issue, as some commenters claimed, with Congress's judgments regarding counsel competency standards that are likely to be adequate. Rather, both the proposed and final versions reflect necessary adaptation of the standards of 18 U.S.C. 3599 for use in chapter 154 certification decisions. In defining relevant prior litigation experience, 18 U.S.C. 3599(b) and (c) deem prior trial experience relevant for trial appointments, and prior appellate experience relevant for appointments “after judgment.” The statute does not provide an experience requirement tailored specifically to postconviction proceedings, having no separate specification about the experience required for appointments to provide representation “after judgment”

in postconviction proceedings as opposed to representation “after judgment” on appeal. If section 3599's standards were transcribed as literally as possible in § 26.22(b)(1)(i), the rule would state that a State competency standard is presumptively adequate if it normally requires three years of appellate experience as a precondition for appointment in postconviction proceedings. But chapter 154 differs from section 3599 in that chapter 154 deals exclusively with postconviction proceedings. Prior postconviction litigation experience (as opposed to prior appellate experience) is more similar in character to the postconviction litigation for which an attorney would be appointed pursuant to chapter 154, and more likely on the whole to enable the attorney to provide effective representation in postconviction proceedings. The rule accordingly follows the sensible approach of referring to prior postconviction litigation experience in defining an experience standard that will presumptively be considered adequate for appointments in the postconviction proceedings addressed by chapter 154.

The Criminal Justice Act (CJA) guidelines promulgated by the Judicial Conference of the United States counsel courts to consider postconviction experience when making appointments under 18 U.S.C. 3599. *See* 7A Guide to [Federal] Judiciary Policy 620.50 (last rev. 2011) (“CJA Guidelines”), available at <http://www.uscourts.gov/FederalCourts/AppointmentOfCounsel/CJAGuidelinesForms/GuideToJudiciaryPolicyVolume7.aspx>. To be sure, the CJA Guidelines are not absolute requirements even in Federal habeas matters; the guidelines are phrased in permissive terms and elaborate in part on 18 U.S.C. 3005, *see* CJA Guidelines 620.10.10(a), 620.30, which concern appointment of counsel for trial representation in Federal capital cases and does not apply to appointments for collateral proceedings in State capital cases. *Compare* 18 U.S.C. 3005 with 18 U.S.C. 3599. However, the Department does agree that the CJA Guidelines may at times help to inform determinations as to appropriate standards for appointment of counsel, and so understood, the Department is ultimately convinced that the guidelines' advice to consider postconviction experience is sound. The final rule therefore avoids the anomaly that would result from an overly formalistic adaptation of 18 U.S.C. 3599 and instead carries out the adaptation in a manner in which the prior litigation

experience requirement is more finely attuned to the nature of the proceedings—i.e., postconviction proceedings—in which appointments are to be made.

The Department was not convinced, however, by commenters who asserted that this benchmark is deficient (or the other counsel competency provisions of the rule are deficient) because it does not require appointed counsel to have prior experience in *capital* postconviction proceedings, or at a minimum, some prior capital litigation experience generally. While prior capital litigation experience is frequently a relevant and valuable asset for an attorney assigned to handle postconviction matters, *see Wright v. Angelone*, 944 F. Supp. 460, 467 (E.D. Va. 1996), and is also a factor that the CJA Guidelines say courts should consider in Federal capital cases, the Department was ultimately unpersuaded that prior capital litigation experience must be required categorically as a precondition of competence under chapter 154. When setting competency requirements for appointed counsel in the IPA, *see infra*, Congress has not mandated that appointed attorneys invariably have such experience. 42 U.S.C. 14163(e). Similarly, courts and others have recognized that prior capital case experience should not be regarded as a *sine qua non* of an appropriate competency standard for postconviction counsel. *See, e.g., Spears*, 283 F.3d at 1013 (“Nothing in [chapter 154] or in logic requires that a lawyer must have capital experience to be competent.”); ABA Guidelines, at 37 & n. 109 (noting that “[s]uperior postconviction death penalty defense representation has often been provided by members of the private bar who did not have prior experience in the field” and stating that such counsel should be appointed if the client will receive high quality legal representation).

Next, and more broadly, some commenters contended that any competency measure based solely on prior experience will necessarily be insufficient under chapter 154 and criticized the Section 26.22(b)(1)(i) benchmark (and § 26.22(b)(2)) on that basis. Many of these comments urged the view that a State system that relies on prior experience must also incorporate procedures for monitoring counsel performance following appointment and for removal of poorly performing attorneys. The rule remains unchanged in response to these comments. 18 U.S.C. 3599 reflects a Congressional judgment that sufficiently robust experience requirements alone

can be sufficient. Further, when Congress amended chapter 154 in 2006, it could have required all State mechanisms to adopt monitoring and removal provisions similar to those it required in the IPA in 2004, *see* 42 U.S.C. 14163(e)(2)(E), if it viewed such provisions as indispensable, but Congress did not do so. Thus, monitoring or removal requirements are not included in the rule’s benchmark based on 18 U.S.C. 3599. *But see* § 26.22(b)(1)(ii) and discussion *infra*. However, their omission should not displace or affect the existence and operation of more generally applicable monitoring or removal procedures (e.g., disbarment) that a State may have in place, nor should it in any way discourage States from choosing to adopt monitoring and removal provisions as a discretionary matter.

One of the comments argued that the standards applicable under section 3599 to Federal habeas counsel should be considered inadequate for appointment of counsel in State collateral proceedings, on the ground that Federal habeas counsel has the benefit of the antecedent work of State collateral counsel in developing and presenting claims, and accordingly need lesser skills. However, the standards of section 3599 apply to Federal habeas counsel regardless of what prior representation or process has or has not been provided in State proceedings. Also, the same standards apply under section 3599 to counsel in Federal court collateral proceedings in Federal capital cases which, like State court collateral proceedings in State capital cases, are normally preceded only by trial and appeal.

Some commenters also objected to the exception language in the section 3599-based benchmark that allows appointment of counsel not meeting its specific litigation experience requirement in some circumstances. This exception appropriates the standard of 18 U.S.C. 3599(d), which allows courts, for good cause, to appoint other counsel whose background, knowledge, or experience would otherwise enable them to properly represent the petitioner, with due consideration of the seriousness of the penalty (i.e., capital punishment) and the nature of the litigation. We expect that allowing this type of departure will not unduly negate or undermine the specific experience requirement of this aspect of the rule, since its formulation limits its applicability to exceptional cases. It requires good cause for the court to appoint counsel other than those satisfying the specific experience requirement, and requires the court to

verify that such counsel have other characteristics qualifying them to meet the demands of postconviction capital punishment litigation. In the rule, as in section 3599, the exception recognizes that insisting on a rigid application of a defined experience requirement could debar attorneys who are well-qualified on other grounds to represent capital petitioners. The comments provided no persuasive reason to deny this latitude in State court collateral proceedings in capital cases, which Congress has deemed appropriate for Federal court collateral proceedings (and other Federal court proceedings) in capital cases. *See* 18 U.S.C. 3599(d); *cf. Ashmus*, 123 F.3d at 1208 (recognizing that “habeas corpus law is complex and has many procedural pitfalls” but concluding that it is not necessary under chapter 154 that every lawyer have postconviction experience), *rev’d on other grounds*, 523 U.S. 740 (1998).

Though the Department therefore believes there is good reason to retain the availability of the exception to § 26.22(b)(1)(i)’s years of experience requirement that is drawn from 18 U.S.C. 3599(d), the rule is permissive, not mandatory, on this point. If a State decides to omit the exception in its mechanism, such that appointed attorneys will invariably need to have been admitted to the bar for five years and have three years of postconviction litigation experience, that omission will not result in a determination that it has failed to satisfy the § 26.22(b)(1)(i) benchmark.

Finally, some commenters objected to this revision of the benchmark as unduly limiting State discretion regarding the formulation of their counsel competency standards. However, use of this particular standard as a benchmark does not convey or depend on a judgment that other approaches States may choose to adopt are necessarily illegitimate or inadequate for purposes of chapter 154. Rather, other standards may be presented for the Attorney General’s consideration under § 26.22(b)(2), and they will be approved if they otherwise reasonably assure a level of proficiency appropriate for State postconviction litigation in capital cases.

#### **Section 26.22(b)(1)(ii)—Counsel Competency Standards Based on the Innocence Protection Act**

Section 26.22(b)(1)(ii) identifies the establishment of qualification standards for appointment in conformity with the procedures of the IPA as another potential means of satisfying chapter 154.

The text of the rule published in the notice of proposed rulemaking framed the benchmark in terms of “meeting qualification standards established in conformity with 42 U.S.C. 14163(e)(1) [and] (2)(A).” These provisions concern the nature and composition of capital counsel appointment or selection entities, 42 U.S.C. 14163(e)(1), and provide that the appointing authority or an appropriate designated entity must “establish qualifications for attorneys who may be appointed to represent indigents in capital cases,” 42 U.S.C. 14163(e)(2)(A).

Numerous comments on the proposed rule related to how many of the IPA provisions should be imported into the rule’s benchmark. Commenters noted that the benchmark as formulated in the proposed rule did not capture the full range of IPA provisions bearing on the qualifications counsel must meet to be eligible for appointment. In particular, subparagraphs (e)(2)(B), (D), and (E) in 42 U.S.C. 14163 require maintenance of a roster of qualified attorneys, specialized training programs for attorneys providing capital case representation, monitoring the performance of attorneys who are appointed and their attendance at training programs, and removal from the roster of attorneys who fail to deliver effective representation, engage in unethical conduct, or do not participate in required training. These provisions are integral elements of the IPA qualification standards for appointments, because counsel who fail to measure up under these requirements become ineligible for subsequent appointments.

These comments were persuasive that the IPA-based provision in the proposed rule did not fully reflect the IPA system relating to qualifications for appointment because of the omission of reference to subparagraphs (e)(2)(B), (D), and (E) in the statute. The omission has been corrected in § 26.22(b)(1)(ii) in the final rule.

The supplemental notice of proposed rulemaking included this change in the IPA-based benchmark. See 77 FR at 7560. Some of the commenters responding to the supplemental notice questioned the continued omission of certain other IPA provisions, particularly the IPA requirements relating to appointment of two counsel, and the IPA requirements concerning compensation of counsel. See 42 U.S.C. 14163(e)(2)(C), (F). Counsel compensation is addressed in a different part of this rule, which includes benchmarks similar to the IPA provisions. See § 26.22(c)(1)(ii) and (iv)

in the final rule and the related discussion below.

Regarding the number of counsel, chapter 154 does not require States to appoint more than one attorney (as part of a defense team) for postconviction representation. Rather, the applicable statute frames the potential appointment of multiple postconviction counsel as a discretionary matter. See 28 U.S.C. 2261(c)(1) (State capital counsel mechanism must provide for court order “appointing one or more counsels to represent the prisoner”). The Department believes there is no sound basis to eliminate the discretion chapter 154 contemplates by its own terms through a rule that forecloses certification of State mechanisms that provide for the appointment of only one attorney.

Furthermore, the IPA itself requires appointment of two counsel, with some exception, in the context of counsel standards that do not differentiate between different stages in the litigation of capital cases and that are principally concerned with the trial stage. See 42 U.S.C. 14163(c)–(d) (providing that IPA funding is to be used for effective systems for providing competent legal representation at all stages, with general requirement that at least 75% be used in relation to trial representation and at most 25% in relation to appellate and postconviction representation). In adapting the IPA standards to the context of chapter 154, which concerns only representation in postconviction proceedings, some flexibility on the question whether multiple counsel should be required is appropriate and accords with relevant congressional judgments in related contexts. As noted, chapter 154 itself frames the appointment of multiple postconviction counsel as a discretionary matter. 28 U.S.C. 2261(c)(1). Likewise, in relation to Federal capital cases and Federal habeas corpus review of State capital cases, Congress has required appointment of two counsel at trial but has made appointment of more than one counsel at later stages a discretionary matter. Compare 18 U.S.C. 3005 (court to “assign 2 . . . counsel” for trial representation) with 18 U.S.C. 3599(a) (requiring in provisions applicable at later stages “appointment of one or more attorneys”). The rule takes a similar approach when adapting the IPA standards in the chapter 154 context by permitting, but not requiring, State mechanisms to provide for appointment of two attorneys to represent a capital petitioner on collateral review.

Additionally, § 26.22(b) in the rule articulates the statutory requirement that a State provide for the appointment

of competent counsel in State postconviction proceedings and provide standards of competency for the appointment of such counsel. 28 U.S.C. 2265(a)(1)(A), (C). As discussed above, this means that States must have qualification standards that counsel must meet to be eligible for appointment and that the Attorney General finds adequate. The IPA provisions included in § 26.22(b)(1)(ii) in the final rule fit within this framework because they are integral to the IPA’s specification of qualifications that counsel must meet to be eligible for initial or subsequent appointments. The same would not be true of specifications concerning the number of counsel to be appointed.

As to a separate issue, another comment criticized this benchmark on the ground that it does not prescribe definite qualification standards for appointment of counsel, but rather endorses any standards adopted in conformity with the IPA procedures. However, chapter 154 directs the Attorney General to determine whether the State provides standards of competency for appointment of competent counsel in State capital collateral proceedings, and whether the State’s mechanism incorporating such standards will reasonably assure the appointment of competent counsel. It does not require the Attorney General to specify directly the required content of such standards. The corresponding provisions of the IPA reflect a judgment by Congress that qualification standards adopted in conformity with the IPA procedures will be adequate. This judgment is appropriately adopted in defining one of the means by which States may seek to satisfy the requirements of chapter 154.

#### **Section 26.22(b)(2)—Other Counsel Competency Standards**

Section 26.22(b)(2) in the rule provides that the Attorney General may find other competency standards for the appointment of counsel adequate if they reasonably assure a level of proficiency appropriate for State postconviction litigation in capital cases. Some commenters criticized this provision as overly indefinite and urged that the rule should provide for assessment of State capital counsel competency standards only under clearly defined criteria.

Many of these critical comments are premised at least partly on the view that the Attorney General has a conflict of interest under chapter 154. The commenters viewed this alleged conflict as exacerbated by § 26.22(b)(2) and urged that the rule eliminate or drastically limit any opportunity for the Attorney General to exercise judgment

or discretion in evaluating the adequacy of a State capital counsel mechanism. The Department rejects the premise that the Attorney General has a conflict, for reasons discussed above, and therefore finds the comments predicated on that view unpersuasive.

Also, as explained earlier, the Department believes States should retain some significant discretion to formulate and apply counsel competency standards, and § 26.22(b)(2) as drafted appropriately preserves that discretion. There are any number of ways in which a State might adopt measures of experience, knowledge, skills, training, education, or combinations of those considerations in devising a standard that would reasonably assure the appointment of counsel who are competent to conduct postconviction litigation in capital proceedings. Revising § 26.22(b)(2) to provide only very specific, one-size-fits-all criteria is accordingly impractical and would risk foreclosing innovative efforts by States to devise robust standards, even standards that would unquestionably result in the timely appointment of competent counsel.

Furthermore, before Congress reassigned the certification function from the Federal courts to the Attorney General by the 2006 amendments to chapter 154, courts did not assess the adequacy of State counsel competency standards constrained by rigid, pre-announced criteria; they were guided instead by the terms of chapter 154 itself and the facts in a particular case. *See, e.g., Spears*, 283 F.3d at 1012–15; *Ashmus*, 123 F.3d at 1208; *Hill*, 941 F. Supp. at 1142–43. The 2006 amendments changed the decision-maker for purposes of making judgments about the overall adequacy of State systems under chapter 154, but the amendments do not suggest that the Attorney General's discretion to evaluate the adequacy of State competency standards must be constrained by a one-size-fits-all approach. Had Congress questioned the Attorney General's ability to exercise discretion soundly or believed that more specific guidance was necessary, it could have amended the statutory scheme to specify more detailed requirements that State mechanisms must meet when it transferred the certification function to the Attorney General—but Congress did not do so.

This is not to say, as some comments contend, that § 26.22(b)(2) affords a State unbounded discretion to establish any sort of competency standards and still obtain certification of its mechanism under chapter 154. The notice and supplemental notice of

proposed rulemaking described the two approaches now reflected in paragraph (b)(1) of the rule as benchmarks, and they function precisely in that manner. That is, the criteria in paragraph (b)(1) do not simply identify two competency standards that will entitle a State that adopts them to a presumption of adequacy; they also serve as a point of reference in judging the adequacy of other counsel qualification standards that States may establish and offer for certification by the Attorney General. A State mechanism that does not incorporate the benchmark standards will naturally require closer examination by the Attorney General to ensure that it satisfies the statutory standards, and while it is possible to conceive of a variety of alternative competency measures that would satisfy chapter 154's requirements, State competency standards that appear likely to result in significantly lower levels of proficiency compared to the benchmark levels risk being found inadequate under chapter 154. For clarity, the text of the proposed rule has been revised to reflect this understanding, namely, that the paragraph (b)(1) standards function as benchmarks and are relevant to the Attorney General's assessment of alternative competency standards for which certification would be predicated on § 26.22(b)(2).

This explanation also responds to another comment, which complains that the provision appearing in the final rule as § 26.22(b)(2) is overly restrictive, on the ground that it limits the possibility of approval of State competency standards to situations in which they are “functionally identical to or more stringent than” the particular benchmark standards described in § 26.22(b)(1). This comment reflects a misunderstanding of the rule. The analysis statement in the proposed rule noted in relation to the benchmarks that States' adoption of competency requirements that are similar or that are likely to result in even higher levels of proficiency will weigh in favor of a finding of adequacy for purposes of chapter 154, *see* 76 FR at 11709, and a statement to the same effect appears in the section-by-section analysis for this final rule. However, it is not similarity in form to the presumptively adequate standards that section (b)(2) contemplates, and the standards need not function in an identical matter. Rather, § 26.22(b)(2) contemplates a close equivalence in terms of the expectation that a proffered mechanism will reasonably assure an appropriate level of proficiency in appointed counsel. As the analysis statement

explained and this preamble repeats, Congress intended the States to have significant discretion regarding competency standards, within reasonable bounds, and the particular benchmarks identified in the rule do not exhaust the means by which States may satisfy chapter 154's requirements.

#### **Section 26.22(c)—Compensation of Counsel**

Section 26.22(c)(1)(i) refers to the compensation of counsel pursuant to 18 U.S.C. 3599 in Federal habeas corpus proceedings reviewing State capital cases. The Department received no comments that were specifically critical of this standard, which remains unchanged in the final rule.

The compensation standards for appointed capital counsel in State collateral proceedings described in § 26.22(c)(1)(ii) and (iv) in the rule involve compensation comparable to that of retained counsel meeting sufficient competency standards or attorneys representing the State in such collateral proceedings. Some comments were critical of these benchmarks as setting an inadequate level of compensation. However, as explained in the accompanying analysis statement for the rule, these parts of the rule are similar to legislative judgments in the IPA endorsing compensation of capital defense counsel at market rates or at a level commensurate with that of prosecutors. 42 U.S.C. 14163(e)(2)(F)(ii)(I); *see also* ABA Guidelines § 9.1(B)(2), at 49 (same). The comments provided no persuasive reason to reject this legislative judgment in the context of chapter 154, or to believe that compensating appointed capital defense counsel at higher levels than competent retained counsel or counsel representing the State in the same proceedings will generally be necessary to induce a sufficient number of competent attorneys to provide representation.

Section 26.22(c)(1)(iii) in the rule refers to compensation comparable to the compensation of appointed counsel in State appellate or trial proceedings in capital cases. The accompanying explanation in the analysis statement for this rule explains that the compensation afforded for trial and appellate representation is likely to be sufficient to secure the availability of an adequate pool of competent attorneys to provide postconviction representation, because that level of compensation is necessarily sufficient to ensure an adequate number of attorneys are available to provide representation in trials and appeals, where representation by counsel is constitutionally required.

Some commenters criticized this provision as overly permissive on the ground that trial and appellate counsel may be underpaid and that such counsel are sometimes found to have provided constitutionally ineffective assistance. However, that is not an occurrence that can be infallibly guarded against by any level of compensation at any stage of criminal proceedings. Moreover, the proposed rule has been modified to afford the Attorney General latitude to consider any unusual circumstances presented by a particular State system that indicate that the level of compensation called for in this benchmark is unlikely to function as expected. It is conceivable in the context of a particular State and its distinctive market conditions for legal services, for example, that what normally should be sufficient compensation may not in fact be reasonably likely to make competent lawyers available for timely provision to capital petitioners in State postconviction proceedings. *Cf. Baker*, 220 F.3d at 285–86 (considering per-attorney overhead costs and effective compensation rates among other factors in finding compensation scheme inadequate under chapter 154).

Nevertheless, the Attorney General does not exercise limitless discretion to pass judgment on whether State compensation authorizations are sufficiently generous under chapter 154, which provides in relevant part simply that the Attorney General is to determine “whether the State has established a mechanism for the appointment [and] compensation . . . of competent counsel.” 28 U.S.C. 2265(a)(1)(A). The formulation of the rule on this point reads the statutory scheme to allow the Attorney General to review the adequacy of State compensation provisions in the interest of promoting sufficient financial incentives to secure the appointment of competent counsel in sufficient numbers to timely provide representation to capital petitioners in State collateral proceedings. The Attorney General will consider any available relevant information, including the effective hourly rate for appointed attorneys, in evaluating a mechanism’s compensation standards. But the comments critical of the § 26.22(c)(1)(iii) benchmark, which raised concerns with funding for appointment of counsel in particular cases or in particular States, were not sufficiently persuasive that compensation that adequately motivates counsel to accept appointments for the trial and appeal of capital cases (in

which they are held to provision of constitutionally effective assistance) will generally be unlikely to provide sufficient incentives for competent counsel to provide representation in State collateral proceedings satisfying the standards of chapter 154.

Section 26.22(c)(2) in the rule allows approval of other approaches to compensation, but “only if the State mechanism is otherwise reasonably designed to ensure the availability for appointment of [competent] counsel.” Some commenters criticized this provision as vague and urged that the rule be modified so that chapter 154 certification could be granted only if a State’s counsel compensation provisions satisfy definite criteria stated in the rule.

As with the corresponding comments on § 26.22(b)(2), these comments in part reflected an assumption that the Attorney General has a conflict of interest in carrying out his legal duties under chapter 154, and the response is much the same. The underlying assumption of a conflict of interest is not well-founded, for reasons discussed above. Additionally, § 26.22(c)(2) is consistent with the Department’s recognition that a State should have significant latitude in designing a capital counsel mechanism that (among other things) are tailored to the State’s unique characteristics and market conditions. As already noted, the provision affords States appropriate discretion to set alternative levels of compensation that will reasonably assure the timely appointment of competent counsel but that might otherwise be foreclosed by an overly specific *ex ante* requirement. At the same time, as explained above in connection with § 26.22(b)(2), a State’s latitude to consider alternative compensation standards, and the Attorney General’s assessment of any such standards, is not unbounded. The rule identifies four benchmarks that will continue to guide the Attorney General’s evaluation of other proposed standards—as the text of the proposed rule has similarly been revised to clarify.

#### **Section 26.22(d)—Reasonable Litigation Expenses**

Section 26.22(d) in the rule reflects the requirement to provide for payment of reasonable litigation expenses. Some commenters criticized this provision as not sufficiently specific regarding the types of expenses that must be defrayed and the means of evaluating what expenditures are reasonable. They accordingly urged more definite specification concerning these matters in the rule, such as explicitly requiring

payment for investigators, mitigation specialists, mental health and forensic science experts, and support personnel, and providing standards for evaluating the reasonableness of compensation for persons in each category.

The comments raise an important issue for consideration. The Department recognizes that investigators, mental health and forensic experts, and other support personnel often contribute critical services in capital postconviction cases. The Department agrees that payment of such individuals, among other expenses that may arise in the context of a particular case, are litigation expenses that should merit reimbursement if reasonable, and the text of § 26.22(d) has been modified in the final rule to clarify this point. *See* ABA Guidelines, at 128 (“[C]ollateral counsel cannot rely on the previously compiled record but must conduct a thorough, independent investigation in accordance with Guideline 10.7 . . . [including] discover[ing] mitigation that was not presented previously, [and] identify[ing] mental-health claims which potentially reach beyond sentencing issues to fundamental questions of competency and mental-state defenses.”); *Rompilla v. Beard*, 545 U.S. 374, 387 (2005) (“[W]e long have referred [to ABA Standards] as guides to determining what is reasonable.”) (quoting *Wiggins v. Smith*, 539 U.S. 510, 524 (2003) (internal quotation marks omitted)).

However, the language of section 2265 does not suggest that the Attorney General must enumerate the universe of litigation expenses that merit reimbursement. Rather, the relevant statutory directive to the Attorney General is to determine whether the State has established a mechanism for the “payment of reasonable litigation expenses.” 28 U.S.C. 2265(a)(1)(A). The comments on this issue did not persuasively establish that a State should be denied chapter 154 certification if its mechanism requires the payment of reasonable litigation expenses in terms similar to chapter 154 itself, or at some other level of generality less specific than that urged by the commenters. *See Spears*, 283 F.3d at 1016 (“[Chapter 154] requires only that the state mechanism provide for the payment of reasonable litigation expenses. The federal statute thus assumes that a state can assess reasonableness as part of its process.”); *see also* Gould & Greenman, *supra*, at 31–32, 78, 122 (2010) (provision for Federal court proceedings in capital cases, which refers generally to fees and expenses for investigative, expert, and other reasonably necessary services,

states that payment for these purposes shall not exceed \$7,500 unless approved for a higher amount by the circuit chief judge or delegate—but the median reimbursable cost that Federal courts approved in capital cases between 1998 and 2004 was \$83,000).

Importantly, though, as with other requirements under chapter 154, satisfaction of the requirement regarding payment of reasonable litigation expenses requires that States have standards in force that so provide. The Attorney General will consider all relevant aspects of State standards in ascertaining whether the statutory requirements have been satisfied. Thus, as § 26.22(d) states, a general provision requiring payment of reasonable litigation expenses would not be sufficient if negated by rigid payment caps with no authorized means for payment of necessary expenses above such limits, and the Attorney General would similarly consider whether such a provision is negated by State policy that precludes payment for certain categories of expenses that may be reasonably necessary. Moreover, as with other requirements, the Attorney General is not dependent on the State's representations, and any interested person or entity believing that State standards overall do not provide for payment of reasonable litigation expenses is free to bring relevant information to the Attorney General's attention through the comment procedure set out in § 26.23 in the rule.

Comments responding to the supplemental notice of proposed rulemaking suggested that satisfaction of § 26.22(d) should only be considered presumptively adequate for purposes of chapter 154, paralleling the “presumptively” qualifier applicable to the benchmark provisions relating to counsel competency and compensation, which appear in § 26.22(b)(1) and (c)(1) in the final rule. The “presumptively” qualifier is neither necessary nor appropriate here because § 26.22(d) incorporates no benchmark provisions. It articulates the requirement relating to payment of litigation expenses under chapter 154, and States that have established mechanisms that meet this requirement have done what chapter 154 requires in this connection. Its proper counterpart is not the benchmark provisions in § 26.22(b)(1) and (c)(1), but the general articulations of the chapter's requirements relating to counsel competency and compensation in § 26.22(b)(2) and (c)(2), which similarly do not need or have a “presumptively” qualifier.

### **Section 26.23(a)–(c)—Certification Procedure**

These provisions in the rule specify the procedure for the Attorney General to receive requests for chapter 154 certification, obtain public comment on the requests through Internet posting and **Federal Register** publication, and make and announce the certification decision.

Some commenters objected that the public notice and comment procedure of the rule is inadequate and that the Attorney General must engage in additional fact-finding processes. These objections are premised on an incorrect understanding of the nature and scope of the Attorney General's certification determination, as explained earlier in this preamble. The Attorney General's decision to certify an established State mechanism under chapter 154 need not be supported by a data-intensive examination of the State's record of compliance with the established mechanism in all or some significant subset of postconviction cases; for instance, certification should not be foreclosed for a State that cannot submit the information the commenters identify because it has established new standards that satisfy the statutory requirements but for which there is no pre-existing record of compliance. The comments provided no persuasive reason to believe that the rule's procedure, under which the Attorney General will publish a State's request for certification and invite interested parties and the State seeking certification to be heard via written submissions during one or more public comment periods, will be inadequate to provide the information needed for the determinations that the Attorney General actually must make under chapter 154. Moreover, the Attorney General's certifications under chapter 154 are orders rather than rules for purposes of the Administrative Procedure Act (APA). They are accordingly not subject to the APA's rulemaking provisions, *see* 5 U.S.C. 553, much less to the APA's requirements for rulemaking or adjudication required to be made or determined on the record after opportunity for an agency hearing, *see* 5 U.S.C. 553(c), 554, 556, 557.

The Department does not believe, as some commenters urged, that it is necessary to specify detailed information concerning State capital collateral review systems that States must include in their requests for chapter 154 certification. For the reasons already given, these comments were similarly based on an incorrect understanding of the nature and scope

of the Attorney General's certification determination. Chapter 154 itself and this rule explain what States must do to qualify for chapter 154 certification. Under the procedures of § 26.23, States will be free to present any and all information they consider relevant or useful to explain how the mechanism for which they seek certification satisfies these requirements. Likewise, through the public comment procedure of the rule, any other interested person or entity will be free to submit any information it may wish in support of, or in opposition to, the State's request—including information that the mechanism submitted for certification has not been established because its standards are actually negated or overridden by contrary State policy. Further, the proposed rule has been revised to make clear that the Attorney General may permit more than one period for comment to allow the requesting State or any interested parties further opportunity for submission of views or information. The comments provided no persuasive reason for an across-the-board imposition of more definite informational requirements beyond that.

Comments also proposed that the rule require the Attorney General to give personal notice to certain entities concerning a State's submission of a request for chapter 154 certification, such as capital defense entities in the requesting State. In any particular State, there may be a large number of organizations and individuals who are involved in capital defense work or who would be interested in a State's request for chapter 154 certification for other reasons. It is not feasible for the Attorney General to attempt to identify and personally notify all of them. Nor should the Attorney General be in the position of having to pick and choose, identifying certain persons or organizations as sufficiently interested or important to receive personal notice, when others will not receive such notice. Such personal notice requirements, in any event, are unnecessary, because the State's request will be made publicly available on the Internet and in the **Federal Register** as provided in § 26.23(b).

Section 26.23(c) states that if certification is granted, the certification will be published in the **Federal Register**. Some commenters urged that denials of certification also be published in the **Federal Register**. However, the granting of chapter 154 certification by the Attorney General changes the Federal habeas corpus review procedures applicable in relation to capital cases in the State, so there is a

clear interest in making it indisputable and publicly known that certification has been granted, for which **Federal Register** publication is a convenient and sufficient means. The reasons for publicizing a denial of certification through official publication are less compelling because its legal effect is just to perpetuate the status quo. Publication of a denial of certification might alternatively serve the purpose of providing the predicate for an appeal of the Attorney General's decision to the D.C. Circuit Court of Appeals. However, review by the D.C. Circuit would be pursuant to chapter 158 of title 28, *see* 28 U.S.C. 2265(c), which provides that "[o]n the entry of a final order reviewable under this chapter, the agency shall promptly give notice thereof by service or publication in accordance with its rules." 28 U.S.C. 2344. So the Attorney General has the option of giving notice by service to the State official who requested certification regarding the denial of the certification, and is not legally required to publish the denial. Considering the foregoing, the comments do not persuasively establish that the rule should be changed to require uniformly that the Attorney General publish denials of certification in the **Federal Register**.

#### **Section 26.23(d)—Post-Certification Occurrences**

Section 26.23(d) in the rule addresses the effect of changes or alleged changes in a State capital counsel mechanism following certification by the Attorney General.

One commenter urged that more of the accompanying explanation regarding this provision in the analysis statement for the proposed rule be contained in the rule itself. The relevant portion of the analysis statement, 76 FR at 11710–11, in part noted that if a State abolishes its capital counsel mechanism following certification by the Attorney General, then 28 U.S.C. 2261(b)(2)'s requirement of appointment of counsel pursuant to the certified mechanism as a condition of chapter 154's applicability cannot thereafter be satisfied, reflecting the obvious point that counsel cannot be appointed pursuant to something that no longer exists. The analysis statement further noted that capital habeas petitioners may present claims to Federal habeas courts that subsequent changes or alleged changes in the certified mechanism effectively converted it into a new and uncertified mechanism, and hence section 2261(b)(2)'s requirement of appointment of counsel pursuant to the certified mechanism was not satisfied in their cases. This observation

reflects no judgment by the Attorney General as to whether certain changes in a certified mechanism would affect the applicability of chapter 154, and, if so, under what circumstances or to what extent. That is a matter that Federal habeas courts may consider if capital petitioners raise claims of this nature under section 2262(b)(2). The rule says no more on this question because resolving it is not any part of the Attorney General's certification functions under chapter 154.

The analysis went on to note that in such circumstances, or in other circumstances in which there has been some change or alleged change in the State mechanism, the State could request a new certification by the Attorney General of its present capital counsel mechanism. That could avoid litigation in Federal habeas courts under 28 U.S.C. 2261(b)(2) over the present status of the State mechanism and ensure that determinations regarding satisfaction of chapter 154's requirements are made by the Attorney General, subject to review by the D.C. Circuit Court of Appeals, as contemplated by 28 U.S.C. 2261(b)(1) and 2265(c)(2). The rule does not need to be changed to make this point because § 26.23(d) in the rule already says that "[a] State may request a new certification by the Attorney General to ensure the continued applicability of chapter 154 to cases in which State postconviction proceedings occur after a change or alleged change in the State's certified capital counsel mechanism."

Some comments urged that the rule should be changed to provide a means for decertification of State capital counsel mechanisms that the Attorney General has previously approved. One of the comments pointed in this connection to 5 U.S.C. 553(e), which in part requires agencies to give interested persons the right to petition for the repeal of a rule. However, that provision is inapplicable to chapter 154 certifications, which are orders rather than rules, as noted above.

Decertification could conceivably be effected in one of two ways: (i) through some procedure for examination or oversight of State capital counsel mechanisms following their certification to ascertain whether they continue to measure up under chapter 154's standards, or (ii) through modification of the rule to provide that a certification automatically lapses based on subsequent changes in the capital counsel mechanism or other changed circumstances.

The argument for incorporating some provision for continual oversight and potential decertification of State capital

counsel mechanisms is not persuasive for a number of reasons. First, the proposal conflates the functions assigned to the Attorney General and those reserved to Federal habeas courts under the current formulation of chapter 154, which limits the Attorney General's function to making general certification determinations upon request of an appropriate State official, *see* 28 U.S.C. 2261(b)(1), 2265(a)(1), and reserves case-specific inquiries affecting chapter 154's applicability to Federal habeas courts under 28 U.S.C. 2261(b)(2). Second, the chapter includes provisions that establish when a certification takes effect and direct the Attorney General to promulgate regulations to implement a certification procedure, *see* 28 U.S.C. 2265(a)(2), 2265(b), but no direction to the Attorney General to implement a decertification procedure. These considerations lead to the conclusion that day-to-day oversight and potential decertification of State capital counsel mechanisms are not among the Attorney General's authorized functions under chapter 154.

Regarding the idea that a certification would automatically lapse based on subsequent events, such an approach would pose difficulties in operation, most prominently that certification should not cease to apply merely because the change *might* affect satisfaction of the chapter 154 requirements, and that it is unclear *who* would determine whether a change in the capital counsel system might affect satisfaction of the chapter 154 requirements.

This rule accordingly responds to these difficulties by not including any provision for decertification, but providing in § 26.23(d) that a State may seek a new certification from the Attorney General to resolve uncertainties concerning chapter 154's continued applicability in light of subsequent changes or alleged changes in the State's certified capital counsel mechanism. This approach (i) avoids any question of legal consistency with chapter 154's definition of the Attorney General's authority and functions, and (ii) avoids the difficulties inherent in attempting to define *ex ante* and in the absence of any factual context the conditions and procedures for assessing whether and what changes to a State system should prompt a decertification review, but (iii) affords a means for resolution by the responsible authority under chapter 154 of questions that may arise in practice regarding the continued effectiveness of chapter 154 certifications.

Just as importantly, § 26.23(e), discussed below, provides that

certifications are effective for a period of five years, thereby ensuring that a State capital counsel mechanism's current satisfaction of the chapter 154 requirements will be revisited at reasonable intervals. This addresses concerns about the possibility of subsequent changes in a State's system that could put it out of compliance with chapter 154, further reducing the force of any argument that a decertification procedure is needed.

#### Section 26.23(e)—Renewal of Certifications

Section 26.23(e) provides that certifications remain effective for a period of five years. The addition of this provision, which was not in the proposed rule but was described in the supplemental notice of proposed rulemaking, *see* 77 FR at 7562, is responsive to many comments that pointed out that changed circumstances may affect whether a once-certified mechanism continues to be adequate for purposes of chapter 154. For example, inflation or changed economic circumstances may mean that provisions authorizing compensation of counsel at a specified hourly rate, which were sufficient at the time of an initial certification decision, are no longer adequate after the passage of years. Or changes may occur in the standards constituting a State's postconviction capital counsel mechanism that affect their consistency with chapter 154.

Some commenters on the supplemental notice approved of this change but urged that the rule include more detail concerning the operation of the recertification process and the standards that would be applied in making recertification decisions. This is unnecessary because the process and standards for subsequent certification decisions are the same as those for initial certification decisions under the rule. The standards of § 26.22 will be applied in deciding whether a State's capital counsel mechanism for which recertification is requested satisfies the chapter 154 requirements, and the procedure set forth in § 26.23 will apply in entertaining, obtaining public input concerning, and deciding recertification requests.

Two commenters objected to limiting the duration of certifications on the grounds that chapter 154 does not provide for the termination of certifications and that the sponsor of the 2006 amendments to chapter 154 explained that they were intended to create a system of "one-time certification." *See* 152 Cong. Rec. S1625 (daily ed. Mar. 2, 2006) (statement of Sen. Kyl). Regarding the statutory

question, the statutory framework is unquestionably premised on the continuing sufficiency of a mechanism once certified by the Attorney General. The quid pro quo that is the core and the animating purpose of chapter 154, procedural "benefits" for States if and only if they meet the statutory criteria, would cease to make sense if a certification were indefinitely and irrevocably effective even if—by virtue of changed circumstances, *see infra* (analysis statement)—the standards first put in place by a State no longer satisfied the statutory requirements. Providing for periodic review of certifications is fully consistent with the statutory text and avoids such an absurd result. If a statute requires an assessment of mutable conditions against legal standards, a reasonable time limit may be imposed on the effectiveness of a certification to ensure its continuing validity, even if the authorizing statute does not explicitly provide for a time limit. *See Durable Mfg. Co. v. U.S. Dep't of Labor*, 578 F.3d 497, 501–02 (7th Cir. 2009) (upholding time limitation of validity of labor certificates in light of possible subsequent changes in economic circumstances affecting consistency with statutory requirements and objectives).

Regarding the statement by the sponsor of the amendment, it reflects a rejection of the idea of a continuing "compliance review" process or "decertification" procedure under chapter 154 in light of (i) "the substantial litigation burdens" that would likely result for States that have been certified, including "the cost of creating opportunities to force the State to continually litigate its chapter 154 eligibility," (ii) the concern that "if such a means of post-opt-in review were created, it inevitably would be overused and abused," and (iii) the judgment that States "are entitled to a presumption that once they have been certified as chapter-154 compliant, they will substantially maintain their counsel mechanisms." 152 Cong. Rec. S1625 (daily ed. Mar. 2, 2006) (statement of Sen. Kyl). The statement further viewed a decertification procedure as enabling adverse parties to embroil States in challenges to the continued validity of their capital counsel mechanisms under chapter 154 based on case-specific deficits in their operation, such as delay in the appointment of counsel in particular cases for reasons beyond the State's control. *See id.*

Considered as a whole, the sponsor's statement reflects concerns that would be implicated by the creation of a continuing oversight or decertification

procedure for chapter 154. The Department, as discussed above, has not attempted to create such a procedure in the present rule.

The provision adopted in § 26.22(e) in the final rule does not implicate these concerns. It authorizes no person or entity to initiate challenges to the continuing validity of a certification, much less to involve a State in the uncertainty of perpetual litigation about the validity of a certification. Moreover, § 26.22(e) provides that certifications remain effective for an uninterrupted period of five years after the completion of the certification process by the Attorney General and any related judicial review. If recertification is requested at or before the end of that period, the rule provides that the prior certification will remain in effect until the completion of the recertification process by the Attorney General and any related judicial review.

Section 26.22(e) also does not implicate the concern about challenges based on case-specific non-compliance with State capital counsel mechanisms. Recertification decisions by the Attorney General will involve the same standards and procedures as initial certification decisions.

Finally, the inclusion of § 26.22(e) in the rule does not reflect an assumption that States are likely to abolish or materially weaken their chapter 154-compliant capital counsel mechanisms once they have been established. If no changes have occurred that take a State capital counsel mechanism out of compliance with chapter 154, then it will be recertified, and the recertification process will provide a definitive means of establishing continued satisfaction of the chapter's requirements.

#### Section-by-Section Analysis

##### Section 26.20

Section 26.20 explains the rule's purpose of implementing the certification procedure for chapter 154. It is modified from the corresponding provision in the 2008 regulations to describe more fully the conditions for the applicability of chapter 154 under 28 U.S.C. 2261(b).

##### Section 26.21

Section 26.21 defines the terms "appropriate state official" and "state postconviction proceedings" in the same manner as the 2008 regulations, and adds a definition of "appointment" and "indigent prisoners."

Chapter 154 involves a quid pro quo arrangement under which States provide for the appointment of counsel

for indigent petitioners in State postconviction proceedings in capital cases, and in return Federal habeas review is carried out with generally more limited time frames and scope following the State postconviction proceedings in which counsel has been made available. *See* 28 U.S.C. 2261–2266. In this context, not every provision for making counsel available in State postconviction proceedings, however belatedly, can logically be regarded as providing for the appointment of counsel in the sense relevant under the chapter. In particular, that would not be the case if the State capital counsel mechanism provided for the availability of counsel to represent indigent capital petitioners only after the deadline for pursuing State postconviction proceedings had passed; or only after the expiration of the time limit in 28 U.S.C. 2263 for Federal habeas filing; or only after such delay that the time available to prepare for and pursue State or Federal postconviction review had been seriously eroded. Section 26.21 accordingly defines “appointment” to mean “provision of counsel in a manner that is reasonably timely in light of the time limitations for seeking State and Federal postconviction review and the time required for developing and presenting claims in the postconviction proceedings.”

Under 28 U.S.C. 2265(a), a certification request must be made by “an appropriate State official.” Prior to the 2006 amendments to chapter 154, Federal courts entertaining habeas corpus applications by State prisoners under sentence of death would decide which set of habeas corpus procedures applied—chapter 153 or chapter 154 of title 28—and State attorneys general responsible for such litigation could request determinations that their States had satisfied the requirements for the applicability of chapter 154. The 2006 amendments to chapter 154 were not intended to disable the State attorneys general from their pre-existing role in this area, and State attorneys general continue in most instances to be the officials with the capacity and motivation to seek chapter 154 certification for their States. *See* 73 FR at 75329–30. Section 26.21 of the rule accordingly provides that the appropriate official to seek chapter 154 certification is normally the State attorney general. In those few States, however, where the State attorney general does not have responsibilities relating to Federal habeas corpus litigation, the chief executive of the State will be considered the appropriate

State official to make a submission on behalf of the State.

Section 26.21 defines “State postconviction proceedings” as “collateral proceedings in State court, regardless of whether the State conducts such proceedings after or concurrently with direct State review.” Collateral review normally takes place following the completion of direct review of the judgment, but some States have special procedures for capital cases in which collateral proceedings and direct review may take place concurrently. Provisions that separately addressed the application of chapter 154 to these systems were replaced by the 2006 amendments with provisions that permit chapter 154 certification for all States under uniform standards, regardless of their timing of collateral review vis-à-vis direct review. *Compare* 28 U.S.C. 2261(b), 2265 (2006) (as amended by the USA PATRIOT Improvement and Reauthorization Act of 2005), *with* 28 U.S.C. 2261(b), 2265 (2000) (as enacted by AEDPA). *See generally* 152 Cong. Rec. S1620 (daily ed. Mar. 2, 2006) (statement of Sen. Kyl) (explaining that the current provisions simplify the chapter 154 qualification standards, “which obviates the need for separate standards for those States that make direct and collateral review into separate vehicles and those States with unitary procedures”).

The definition of “State postconviction proceedings” in the rule reflects the underlying objective of chapter 154 to provide expedited Federal habeas corpus review in capital cases arising in States that have gone beyond the constitutional requirement of providing counsel for indigents at trial and on appeal by extending the provision of counsel to indigent capital petitioners in State collateral proceedings. *See* 73 FR at 75332–33, 75337 (reviewing relevant legislative and regulatory history). The provisions of chapter 154, as well as its legislative history, reflect the understanding of “postconviction proceedings” as specifically referring to collateral proceedings rather than to all proceedings that occur after conviction (e.g., sentencing proceedings, direct review). *See* 28 U.S.C. 2261(e) (providing that ineffectiveness or incompetence of counsel during postconviction proceedings in a capital case cannot be a ground for relief in a Federal habeas corpus proceeding); 28 U.S.C. 2263(a), (b)(2) (180-day time limit for Federal habeas filing under chapter 154 starts to run “after final State court affirmation of the conviction and sentence on direct review or the expiration of the time for seeking such

review” subject to tolling “from the date on which the first petition for postconviction review or other collateral relief is filed until the final State court disposition of such petition”); 152 Cong. Rec. S1620, 1624–25 (daily ed. Mar. 2, 2006) (statement of Sen. Kyl) (explaining that chapter 154 provides incentives for States to provide counsel in State postconviction proceedings, referring to collateral proceedings); 151 Cong. Rec. E2639–40 (daily ed. Dec. 22, 2005) (extension of remarks of Rep. Flake) (displaying the same understanding); *see also, e.g., Murray v. Giarratano*, 492 U.S. 1 (1989) (using the terms postconviction and collateral proceedings interchangeably).

#### Section 26.22

Section 26.22 sets out the requirements for certification that a State must meet to qualify for the application of chapter 154. These are the requirements in 28 U.S.C. 2261(c)–(d) and 2265(a)(1).

#### Paragraph (a) of § 26.22—Appointment of Counsel

Paragraph (a) of § 26.22 sets out the requirements of chapter 154 concerning appointment of counsel that appear in 28 U.S.C. 2261(c)–(d).

#### Paragraph (b) of § 26.22—Competent Counsel

Paragraph (b) of § 26.22 explains how States may satisfy the requirement to provide for appointment of “competent counsel” and to provide “standards of competency” for such appointments. 28 U.S.C. 2265(a)(1)(A), (C).

The corresponding portion of the 2008 regulations construed the reference to appointment of “competent counsel” in section 2265(a)(1)(A) as a cross-reference to counsel meeting the competency standards provided by the State pursuant to section 2265(a)(1)(C). It accordingly treated the definition of such standards as a matter of State discretion, not subject to further review by the Attorney General. *See* 73 FR at 75331. However, these provisions may also reasonably be construed as permitting the Attorney General to require a threshold of minimum counsel competency, while recognizing substantial State discretion in setting counsel competency standards. *See generally* OLC Opinion. The latter understanding is supported by cases interpreting chapter 154, *see, e.g., Spears*, 283 F.3d at 1013 (recognizing that “Congress . . . intended the states to have substantial discretion to determine the substance of the competency standards” under chapter 154 while still reviewing the adequacy

of such standards), and by the original Powell Committee proposal from which many features of chapter 154 ultimately derive, *see* 135 Cong. Rec. 24696 (1989). This understanding is adopted in § 26.22(b) of the final rule.

The specific standards set forth in paragraph (b) are based on judgments by Congress in Federal laws concerning adequate capital counsel competency standards and on judicial interpretation of the counsel competency requirements of chapter 154. Section 26.22(b)(1) sets out two approaches that will presumptively be considered adequate to satisfy chapter 154—an option involving an experience requirement derived from the standard for appointment of counsel in Federal court proceedings in capital cases (paragraph (b)(1)(i)), and an option involving qualification standards set in a manner consistent with relevant portions of the IPA (paragraph (b)(1)(ii)). Section 26.22(b)(2) provides that States can satisfy chapter 154's requirements by reasonably assuring an appropriate level of proficiency in other ways, such as by requiring some combination of experience and training.

As indicated in the introductory language in subsection (b)(1) of § 26.22, State capital counsel mechanisms will be regarded as presumptively adequate in relation to counsel competency if they meet or exceed the benchmark standards identified in the subsection. States will not be penalized for going beyond the minimum required by the rule. Thus, for example, in relation to paragraph (b)(1)(i), State competency standards will be considered presumptively sufficient if they require five years of postconviction experience, rather than three; uniform satisfaction of the five-year/three-year experience requirement rather than allowing some exception as in 18 U.S.C. 3599(d); or training requirements for appointment in addition to the specified experience requirement.

The rule does not require that all counsel in a State qualify under the same standard. Alternative standards may be used so long as the State mechanism requires that all counsel satisfy some standard qualifying under paragraph (b). *Cf.* 18 U.S.C. 3599(d) (allowing exceptions to categorical experience requirement); *Spears*, 283 F.3d at 1013 (finding that alternative standards are allowed under chapter 154). Hence, for example, a State system may pass muster by requiring that appointed counsel either satisfy an experience standard sufficient under paragraph (b)(1)(i) or satisfy an alternative standard sufficient under paragraph (b)(2) involving more limited

experience but an additional training requirement.

#### Option 1: § 26.22(b)(1)(i)—The Competency Standards for Federal Court Proceedings

As provided in paragraph (b)(1)(i) of § 26.22, a State may satisfy chapter 154's requirement relating to counsel competency by requiring appointment of counsel “who have been admitted to the bar for at least five years and have at least three years of postconviction litigation experience.” This is based on the standard for appointed counsel in capital case proceedings in Federal court. *See* 18 U.S.C. 3599(a)–(e). Because Congress has determined that a counsel competency standard of this nature is adequate for capital cases in Federal court proceedings, including postconviction proceedings, *see* 18 U.S.C. 3599(a)(2), it will also presumptively be considered adequate for chapter 154 purposes when such cases are at the stage of State postconviction review.

The counsel competency standards for Federal court proceedings in capital cases under 18 U.S.C. 3599 do not require adherence to a five-year/three-year experience requirement in all cases, but provide that the court, “for good cause, may appoint another attorney whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant,” with due consideration of the seriousness of the penalty (i.e., capital punishment) and the nature of the litigation. 18 U.S.C. 3599(d). For example, a court might consider it appropriate to appoint an attorney who is a law professor with expertise in capital punishment law and training in capital postconviction litigation to represent a prisoner under sentence of death, even if the attorney has less than three years of relevant litigation experience. The rule in paragraph (b)(1)(i) accordingly does not require the imposition of a five-year/three-year minimum experience requirement in all cases, but allows States that generally impose such a requirement to permit the appointment of other counsel who would qualify for appointment under the exception allowed in 18 U.S.C. 3599, i.e., appointment by a court, for good cause, of attorneys whose background, knowledge, or experience would otherwise enable them to properly represent prisoners under sentence of death considering the seriousness of the penalty and the nature of the litigation. This recognizes, as in section 3599, that courts may properly be allowed, for good cause, to depart from the specified experience

requirement, which the Department expects would occur only in exceptional cases.

#### Option 2: § 26.22(b)(1)(ii)—The Innocence Protection Act Standards

Paragraph (b)(1)(ii) in § 26.22 sets forth a second approach that presumptively satisfies the counsel competency requirements of chapter 154, specifically, by setting qualification standards for appointment of postconviction capital counsel in a manner consistent with the IPA. The IPA directs the Attorney General to provide grants to States to create or improve “effective system[s] for providing competent legal representation” in capital cases, 42 U.S.C. 14163(c)(1), and provides a definition of “effective system” in 42 U.S.C. 14163(e) that is largely based on elements of the ABA Guidelines. *Compare* 42 U.S.C. 14163(e), with ABA Guidelines § 3.1, at 22–23. The IPA specifies that such effective systems are to include appointment of capital counsel (i) by a public defender program, (ii) by an entity composed of individuals with demonstrated knowledge and expertise in capital cases (other than current prosecutors) that is established by statute or by the highest State court with criminal case jurisdiction, or (iii) by the court appointing qualified attorneys from a roster maintained by a State or regional selection committee or similar entity pursuant to a pre-existing statutory procedure. 42 U.S.C. 14163(e)(1).

Under the IPA requirements, the appointing authority or an appropriate designated entity must “establish qualifications for attorneys who may be appointed to represent indigents in capital cases,” “maintain a roster of qualified attorneys,” “conduct, sponsor, or approve specialized training programs,” and monitor and disqualify from subsequent appointment attorneys whose performance is ineffective or unethical or who fail to participate in required training. 42 U.S.C. 14163(e)(2)(A), (B), (D), (E). The IPA does not prescribe the content of the required counsel qualification standards, but assumes that the specifications regarding the nature of the appointment or selection authority—and the associated requirements for post-appointment monitoring and potential disqualification—can be relied on to provide appropriate competency standards.

Paragraph (b)(1)(ii) in § 26.22 follows this legislative judgment in relation to a State's satisfaction of the counsel competency requirements of chapter

154. Thus, a State's capital counsel mechanism will presumptively be deemed adequate for purposes of chapter 154's counsel competency requirements if it provides for the appointment and qualification (or disqualification) of counsel in State postconviction proceedings in capital cases in a manner consistent with 42 U.S.C. 14163(e)(1) and 14163(e)(2)(A), (B), (D), (E).

**Option 3: § 26.22(b)(2)—Other Standards Reasonably Assuring Proficiency**

In enacting chapter 154, "Congress did not envision any specific competency standards but, rather, intended the states to have substantial discretion to determine the substance of the competency standards." *Spears*, 283 F.3d at 1013. The options described in paragraphs (b)(1)(i) and (ii) in § 26.22 accordingly do not exhaust the means by which States may satisfy chapter 154's requirements concerning counsel competency. Indeed, Congress in formulating chapter 154 rejected a recommendation that States uniformly be required to satisfy standards similar to those for Federal court proceedings in capital cases that currently appear in 18 U.S.C. 3599, *see* 73 FR at 75331, and in amending chapter 154 in 2006 Congress did not modify chapter 154 to require adherence by States to the IPA standards that had been enacted in 2004 but rather continued to use the more general language of chapter 154 relating to counsel competency.

Consequently, as provided in paragraph (b)(2) in § 26.22, the Attorney General will consider whether a State's counsel competency standards reasonably assure appointment of counsel with a level of proficiency appropriate for State postconviction litigation in capital cases, even if they do not meet the particular criteria set forth in paragraph (b)(1)(i) or (b)(1)(ii). As in the courts' consideration of the adequacy of State competency standards prior to the 2006 amendments to chapter 154, no definite formula can be prescribed for this review, and the Attorney General will assess such State mechanisms individually. Measures that will be deemed relevant include standards of experience, knowledge, skills, training, education, or combinations of these considerations that a State requires attorneys to meet in order to be eligible for appointment in State capital postconviction proceedings. *Cf.* 18 U.S.C. 3599(d) (allowing appointment of counsel whose background, knowledge, or experience would otherwise enable such counsel to properly represent the

petitioner); *Spears*, 283 F.3d at 1012–13 (finding that competency standards involving combination of experience, proficiency, and education were adequate under chapter 154); ABA Guidelines § 5.1(B)(2), at 35, § 8.1(B), at 46 (recommending skill and training requirements for capital counsel).

Also, the rule in subparagraphs (b)(1)(i) and (ii) of § 26.22 identifies particular approaches that will be considered presumptively adequate, namely, those of the Federal capital counsel statute, 18 U.S.C. 3599, or the IPA, 42 U.S.C. 14163(e)(1), (2)(A) (B), (D), (E). These approaches accordingly serve as benchmarks, and a State's adoption of competency requirements that are likely to result in similar or even higher levels of proficiency will weigh in favor of a finding of adequacy for purposes of chapter 154. Conversely, State competency standards that appear likely to result in significantly lower levels of proficiency compared to the benchmark levels risk being found inadequate under chapter 154.

**Paragraph (c) of § 26.22—Compensation of Counsel**

Paragraph (c) of § 26.22 explains how a State may satisfy the requirement that it have established a mechanism for the compensation of appointed counsel. 28 U.S.C. 2265(a)(1)(A). The corresponding portion of the 2008 regulations assumed that levels of compensation for purposes of chapter 154 were a matter of State discretion, not subject to review by the Attorney General, because the statute refers simply to "compensation" and imposes no further requirement that the authorized compensation be "adequate" or "reasonable." *See* 73 FR at 75331–32. However, the broader statutory context is the requirement that the State establish a mechanism "for the appointment [and] compensation . . . of competent counsel." 28 U.S.C. 2265(a)(1)(A). This requirement reflects a determination by Congress that reliance on unpaid volunteers to represent indigent prisoners under sentence of death is insufficient, and a State mechanism affording inadequate compensation could similarly fall short in ensuring the availability of competent counsel for appointment. Hence, when a State relies on a compensation incentive to secure competent counsel, chapter 154 is reasonably construed to permit the Attorney General to review the adequacy of authorized compensation. This understanding is adopted in § 26.22(c) of the proposed rule.

Paragraph (c)(1) in § 26.22 describes a number of possible compensation standards that will presumptively be

considered adequate for purposes of chapter 154, generally using as benchmarks the authorizations for compensation of capital counsel that have been deemed adequate in other acts of Congress.

The first option, appearing in paragraph (c)(1)(i), is compensation comparable to that authorized by Congress for representation in Federal habeas corpus proceedings reviewing State capital cases in 18 U.S.C. 3599(g)(1). This level of compensation should similarly be adequate to ensure the availability of competent counsel for appointment in such cases at the stage of State postconviction review.

The second option, appearing in paragraph (c)(1)(ii), is compensation comparable to that of retained counsel who meet competency standards sufficient under paragraph (b). The IPA and the ABA Guidelines similarly endorse reliance on market rates for legal representation to provide adequate compensation for appointed capital counsel. *See* 42 U.S.C.

14163(e)(2)(F)(ii)(II); ABA Guidelines § 9.1(B)(3), at 49. Compensation sufficient to induce competent attorneys to carry out such representation for hire should likewise be sufficient to attract competent attorneys to accept appointments for such representation.

The third option, appearing in paragraph (c)(1)(iii), is compensation comparable to that of appointed counsel in State appellate or trial proceedings in capital cases. *Cf.* 18 U.S.C. 3599(g)(1) (authorization for compensation of capital counsel not differentiating between compensation at different stages of representation). The compensation afforded at the stages of trial and appeal must be sufficient to secure competent attorneys to provide representation because effective legal representation is constitutionally required at those stages. Comparable compensation should accordingly be sufficient for that purpose at the postconviction stage.

The fourth option, appearing in paragraph (c)(1)(iv), is compensation comparable to that of attorneys representing the State in State postconviction proceedings in capital cases. This option also follows the IPA and the ABA Guidelines, which provide that capital counsel employed by defender organizations should be compensated on a salary scale commensurate with the salary scale of prosecutors in the jurisdiction. 42 U.S.C. 14163(e)(2)(F)(ii)(I); ABA Guidelines § 9.1(B)(2), at 49. The rule allows this approach for compensation of both public defenders and private counsel, but recognizes that private

defense counsel may have to pay from their own pockets overhead expenses that publicly employed prosecutors do not bear. The rule accordingly specifies that, if paragraph (c)(1)(iv) is relied on to justify the level of compensation authorized for private counsel, the compensation standard should take account of overhead costs (if any) that are not otherwise payable as reasonable litigation expenses. *Cf. Baker*, 220 F.3d at 285–86 (finding that compensation resulting in substantial losses to appointed counsel was inadequate under chapter 154).

In comparing a State's compensation standards to the benchmarks identified in paragraph (c)(1), both hourly rates and overall limits on compensation will be taken into account. For example, under paragraph (c)(1)(iii), suppose that State law authorizes the same hourly rate for compensation of appointed capital counsel at the appellate stage and in postconviction proceedings, but it specially imposes a low overall limit on compensable hours at the postconviction stage. The compensation authorized at the respective stages may then not be comparable in any realistic sense, and the objective of ensuring the availability of competent counsel for postconviction representation may not be realized, because counsel who accepted such representation would effectively be required to function as uncompensated volunteers to the extent they needed to work beyond the maximum number of compensable hours. This does not mean that State compensation provisions will be deemed inadequate if they specially prescribe presumptive limits on overall compensation at the postconviction stage, but comparability to the paragraph (c)(1) benchmarks may then depend on whether the State provides means for authorizing compensation beyond the presumptive maximum where necessary. *Cf. Spears*, 283 F.3d at 1015 (approving a presumptive 200-hour limit under chapter 154 where compensation was available for work beyond that limit if reasonable); *Mata v. Johnson*, 99 F.3d 1261, 1266 (5th Cir. 1996) (overall \$7500 limit on compensation was not facially inadequate under chapter 154 and was not shown inadequate in the particular case), *vacated in part on other grounds*, 105 F.3d 209 (5th Cir. 1997).

As with the counsel competency benchmarks of paragraph (b)(1), the counsel compensation standards of paragraph (c)(1) provide only a floor that States are free to exceed, and not all counsel must be compensated in conformity with a single standard. A State may adopt alternative standards,

each comparable to or exceeding some benchmark identified in paragraph (c)(1), and provide for compensation of different counsel or classes of counsel in conformity with different standards. For example, a State might provide for representation of some indigent capital petitioners in postconviction proceedings by appointed private counsel and some by public defender personnel, compensate the private counsel in conformity with paragraph (c)(1)(iii), and compensate the public defender counsel in conformity with paragraph (c)(1)(iv).

The rule recognizes that the options set out in paragraph (c)(1) of § 26.22 are not necessarily the only means by which a State may provide compensation for competent counsel. State compensation provisions for capital counsel have been deemed adequate for purposes of chapter 154 and other Federal laws independent of any comparison to the benchmarks in paragraph (c)(1). *See* 42 U.S.C. 14163(e)(2)(F)(i) (under the IPA, State may compensate under qualifying statutory procedure predating that Act); *Spears*, 283 F.3d at 1015 (State could compensate at “a rate of up to \$100 an hour, a rate that neither Petitioner nor amici argue was unreasonable”). Also, a State may secure representation for indigent capital petitioners in postconviction proceedings by means not dependent on any special financial incentive for accepting appointments, such as by providing sufficient salaried public defender personnel to competently carry out such assignments as part of their duties. Accordingly, under paragraph (c)(2) in § 26.22, capital counsel mechanisms involving compensation provisions that do not satisfy paragraph (c)(1) may be found to satisfy the statutory requirement if they are otherwise reasonably designed to ensure the availability of competent counsel. As with § 26.22(b)(2) of the rule, mechanisms seeking to qualify under paragraph (c)(2) that appear likely to provide for significantly lesser compensation compared to the benchmark levels risk being found inadequate under chapter 154.

#### Paragraph (d) of § 26.22—Payment of Reasonable Litigation Expenses

Paragraph (d) of § 26.22 incorporates the requirement in 28 U.S.C. 2265(a)(1)(A) to provide for the payment of reasonable litigation expenses. An inflexible cap on reimbursable litigation expenses in capital postconviction proceedings could contravene this requirement by foreclosing the payment of costs incurred by counsel, even if determined by the court to be

reasonably necessary. However, the requirement does not foreclose a presumptive limit if the State provides means for authorizing payment of litigation expenses beyond the limit where necessary. *Cf.* 18 U.S.C. 3599(f), (g)(2) (establishing presumptive \$7500 limit on payment for litigation expenses in Federal court proceedings in capital cases, with authority for chief judge or delegate to approve higher amounts); *Mata*, 99 F.3d at 1266 (concluding that overall \$2500 limit on payment of litigation expenses was not facially inadequate under chapter 154 and was not shown to be inadequate in the particular case).

#### Section 26.23

Section 26.23 in the rule sets out the mechanics of the certification process for States seeking to opt in to chapter 154.

Paragraph (a) provides that an appropriate State official may request in writing that the Attorney General determine whether the State meets the requirements for chapter 154 certification. Paragraph (b) provides that the Attorney General will make the request available on the Internet and solicit public comment on the request by publishing a notice in the **Federal Register**. It requires Internet availability because State requests for certification may include supporting materials not readily reproducible or viewable in the **Federal Register**, such as copies of State statutes, rules, and judicial decisions bearing on the State's satisfaction of chapter 154's requirements for certification.

As provided in paragraph (c), the Attorney General will review the State's request, including consideration of timely public comments received in response to a **Federal Register** notice. The Attorney General will decide whether the State has satisfied the requirements for chapter 154 certification and will publish the certification in the **Federal Register** if certification is granted. The certification will include a determination of the date the capital counsel mechanism qualifying the State for certification was established, as that date is the effective date of the certification. 28 U.S.C. 2265(a)(2).

Paragraph (d) addresses the effect of changes or alleged changes in a State's capital counsel mechanism after that mechanism has been certified by the Attorney General. The paragraph first addresses situations involving changes or alleged changes in a State's capital counsel mechanism prior to State postconviction proceedings in a capital case. Chapter 154's special Federal

habeas corpus review procedures apply in cases in which two conditions are met: (i) the State's capital counsel mechanism has been certified by the Attorney General, 28 U.S.C. 2261(b)(1), and (ii) "counsel was appointed pursuant to that mechanism"—i.e., the mechanism certified by the Attorney General—unless the petitioner "validly waived counsel . . . [or] retained counsel . . . or . . . was found not to be indigent," 28 U.S.C. 2261(b)(2). The first sentence of paragraph (d) therefore notes that certification by the Attorney General under chapter 154 reflects the Attorney General's determination that the State capital counsel mechanism examined in the Attorney General's review satisfies chapter 154's requirements. If a State later discontinues that mechanism before counsel is appointed in a given State postconviction proceeding, then counsel in that case will not have been "appointed pursuant to" the mechanism that was approved by the Attorney General and chapter 154 would accordingly be inapplicable in that case. Similarly, if a State later changes or is alleged to have changed the certified mechanism, litigation before Federal habeas courts may result under 28 U.S.C. 2261(b)(2) as to whether the State has in fact materially changed its mechanism and, if so, whether the change means that counsel (even if appointed) was appointed pursuant to what is effectively a new and uncertified mechanism, rather than the mechanism certified by the Attorney General.

The second sentence of paragraph (d) accordingly provides that a State may seek a new certification by the Attorney General if there is a change or alleged change in a previously certified capital counsel mechanism. If a State wishes to improve on a certified capital counsel mechanism, then certification by the Attorney General of the new or revised mechanism will allow the State to avoid Federal habeas court litigation over whether chapter 154 is applicable to cases involving appointments made pursuant to that mechanism. Similarly, if legal questions are raised about the continued applicability of chapter 154 based on changes or alleged changes in a certified capital counsel mechanism, a State may seek a new certification by the Attorney General that its current mechanism satisfies chapter 154's requirements, ensuring the continued applicability of chapter 154's special Federal habeas corpus procedures. By seeking a new certification of a new or revised capital counsel mechanism, a State may ensure that it is the Attorney

General, subject to review by the DC Circuit Court of Appeals, who determines whether its capital counsel mechanism is in present compliance with chapter 154's requirements, *see* 28 U.S.C. 2261(b)(1), 2265(c)(2), and avoid litigation over that matter in the Federal habeas courts.

The final sentence in paragraph (d) states that subsequent changes in a State's capital counsel mechanism do not affect the applicability of chapter 154 in cases in which a mechanism certified by the Attorney General existed throughout State postconviction proceedings in the case. For example, suppose that the Attorney General certifies a State's capital counsel mechanism in 2013, the State postconviction proceedings in a capital case are carried out in 2014 and 2015 with counsel in those proceedings appointed pursuant to the certified mechanism, and Federal habeas corpus proceedings in the case commence in 2016. Suppose further that the State makes some change in 2016 to its counsel competency or compensation standards. Because a certified capital counsel mechanism would have been in place throughout State postconviction review, the prerequisites for expedited Federal habeas corpus review under chapter 154 would be satisfied. *See* 28 U.S.C. 2261(b). That result would not be affected by later changes in the State's postconviction capital counsel mechanism.

Section 26.23(e) provides in part that a chapter 154 certification remains effective for a period of five years. This takes account of the possibility of changes over time in a State's standards constituting its postconviction capital counsel mechanism, and the possibility of other changes in a State that may affect the continuing sufficiency over time of standards initially adopted by a State and certified under chapter 154. For example, a State provision authorizing compensation of counsel at a specified hourly rate may initially be reasonably designed to ensure the availability for appointment of competent counsel, but that may no longer be the case after the passage of years in light of inflation or other changed economic circumstances. *Cf. Durable Mfg. Co.*, 578 F.3d at 501–02 (upholding time limitation of validity of labor certificates in light of possible subsequent changes in economic circumstances affecting consistency with statutory requirements and objectives). Providing for some limitation on the lifespan of certifications and requiring renewal allows questions concerning the continued adequacy of the mechanism's

standards, including whether they continue to apply, to be reexamined at regular intervals, each time with increased information about a State's actual experience with its mechanism, rather than assuming that a once-compliant State system is compliant indefinitely. At the same time, overly stringent limits on the duration of certifications could unduly burden States and undermine the incentive States have under chapter 154 to undertake the effort to establish compliant mechanisms and seek their certification.

Balancing these considerations, § 26.23(e) in the rule provides a basic period of five years during which a certification remains valid, with further provisions regarding the beginning and end of the period to promote the uninterrupted availability of the benefits of chapter 154 to a certified State when seeking recertification. As provided in 28 U.S.C. 2265(a)(2), the effectiveness of a certification is backdated to the date the certified capital counsel mechanism was established, but under the rule the five-year limit on its duration does not begin to run until the completion of the certification process by the Attorney General and any related judicial review. Moreover, the rule provides that a certification remains effective for an additional period extending until the conclusion of the Attorney General's disposition of the State's recertification request and any judicial review thereof, if the State requests recertification at or before the end of the five-year period.

### Regulatory Certifications

#### *Executive Order 13563 and 12866*

As described in Executive Order 13563, Improving Regulation and Regulatory Review (Jan. 18, 2011), agencies must, to the extent permitted by law, propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and, in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

The Department of Justice has determined that this rule is a "significant regulatory action" under

Executive Order 12866, section 3(f), and, accordingly, this rule has been reviewed by the Office of Management and Budget. The determination that this is a significant regulatory action, however, does not reflect a conclusion that it is “likely to result in a rule that may . . . [h]ave an annual effect on the economy of \$100 million or more” or other effects as described in section 3(f)(1) of the Executive Order.

This rule has no effect on States unless they decide that they wish to qualify for chapter 154 certification. If States do decide to apply for chapter 154 certification, the resulting costs will mainly depend on (i) the number of capital cases these States litigate in State postconviction proceedings, and (ii) the incremental difference (if any) between their current per-case capital litigation costs and the corresponding costs under a system that complies with this rule.

These costs cannot be exactly quantified because (i) we do not know how many States will try to seek certification based on their own analysis of whether it is beneficial on balance to do so; (ii) the rule provides States wide latitude to design their own appointment mechanism; (iii) the rule affords the Attorney General discretion in making certification decisions; and (iv) there are non-quantifiable benefits to providing an opt-in system that may outweigh the costs such as improved fairness and equity in capital counsel systems. Absent a State’s application and public comment, the Department cannot determine whether the Attorney General would decide, in his discretion, to certify that the State’s capital counsel mechanism satisfies this rule.

Moreover, even if the Department could determine at this time that a State’s mechanism fails to meet this rule’s standards, the Department does not have the data necessary to calculate the costs of making the State mechanism compliant and the rule gives States substantial discretion to correct any perceived shortfall in a myriad of ways. Thus, any cost projections would need to be specific to each State and would depend on unknown variables such as how a State will design compensation and competency standards and whether and how the Attorney General will exercise discretion. Against this background, the Department cannot quantify the costs and benefits of this rule.

Despite the impracticability of exact quantification, the Department can confidently project that the annual cost will not exceed \$100 million. At the end of 2010, 36 States held 3,100 prisoners under sentence of death. *See* Bureau of Justice Statistics, Office of Justice

Programs, U.S. Department of Justice, *Capital Punishment, 2010—Statistical Tables* at 8, table 4 (Dec. 2011), available at <http://www.bjs.gov/content/pub/pdf/cp10st.pdf>. Regarding the costs of satisfying the requirements of this rule, 35 of the 36 States accounting for capital cases in the United States already provide for appointment of counsel in State postconviction proceedings. These States may still fall short of satisfying this rule’s standards, in relation to such matters as payment of litigation expenses or compensation of counsel, but this rule affords States a variety of options that may minimize any resulting increase in costs.

Assuming that all 36 States that currently have the death penalty will upgrade their postconviction capital counsel mechanisms to the extent necessary to satisfy this rule, and that the number of capital cases pending in State postconviction proceedings in a year is 2,000, the total cost for the States to comply with this rule could not reach \$100 million unless the average increase in litigation costs were \$50,000 for each case. While for the reasons explained above we have not estimated the costs for States to satisfy this rule, we have no reason to believe that costs would increase to that degree.

States that obtain certification by the Attorney General under this rule could realize costs savings resulting from chapter 154’s expedited procedures in subsequent Federal habeas corpus review. *See* 28 U.S.C. 2262, 2264, 2266. Chapter 154’s expedited procedures offer States the benefits of: (i) Definite rules regarding the commencement and expiration of stays of execution, *see* 28 U.S.C. 2262; (ii) clearer and more circumscribed rules regarding the claims cognizable on federal habeas corpus review, *see* 28 U.S.C. 2264; (iii) general time frames of 450 days and 120 days respectively for decision of capital habeas petitions by federal district courts and courts of appeals, *see* 28 U.S.C. 2266(b)(1); and (iv) limited allowances for the amendment of such petitions, *see* 28 U.S.C. 2266(b)(3). In addition, because the States would more fully defray the costs of representing indigent capital petitioners in State postconviction proceedings, there would be less need for representation by private counsel on a pro bono basis, often arranged through postconviction capital defense projects. Thus, State costs also would be offset by reduced costs for private entities and individuals who otherwise would provide representation, reducing the overall economic effect.

Along with the cost savings States could obtain, this rule also affords

indigent capital petitioners non-quantifiable benefits. If a State chooses to “opt-in” to Chapter 154, an indigent capital petitioner is more likely to be represented by competent counsel in state postconviction proceedings—proceedings in which there is no constitutional right to counsel. The timely appointment of qualified counsel also provides indigent capital petitioners the opportunity to properly and promptly present their challenges in postconviction proceedings without the severe time pressure created by the belated entry of a lawyer. Above all, the rule’s requirement of timely appointment of competent counsel seeks to provide an indigent capital petitioner the benefit of a collateral review that will be fair, thorough, and the product of capable and committed advocacy.

#### *Executive Order 13132—Federalism*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. It provides only a framework for those States that wish to qualify for the benefits of the expedited habeas procedures of chapter 154 of title 28 of the United States Code. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

#### *Executive Order 12988—Civil Justice Reform*

This regulation meets the applicable standards set forth in section 3(a) and (b)(2) of Executive Order 12988.

#### *Regulatory Flexibility Act*

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This rule provides only a framework for those States that wish to qualify for the benefits of the expedited habeas procedures of chapter 154 of title 28 of the United States Code.

#### *Unfunded Mandates Reform Act of 1995*

This rule will not result in aggregate expenditures by State, local and tribal governments or by the private sector of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under

the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

**List of Subjects in 28 CFR Part 26**

Law enforcement officers, Prisoners.

Accordingly, for the reasons set forth in the preamble, part 26 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

**PART 26—DEATH SENTENCES PROCEDURES**

■ 1. The authority citation for part 26 continues to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 4001(b), 4002; 28 U.S.C. 509, 510, 2261, 2265.

■ 2. A new Subpart B is added to part 26 to read as follows:

**Subpart B—Certification Process for State Capital Counsel Systems**

Sec.

26.20 Purpose.

26.21 Definitions.

26.22 Requirements.

26.23 Certification process.

**Subpart B—Certification Process for State Capital Counsel Systems**

**§ 26.20 Purpose.**

Sections 2261(b)(1) and 2265(a) of title 28 of the United States Code require the Attorney General to certify whether a State has a mechanism for providing legal representation to indigent prisoners in State postconviction proceedings in capital cases that satisfies the requirements of chapter 154 of title 28. If the Attorney General certifies that a State has established such a mechanism, sections 2262, 2263, 2264, and 2266 of chapter 154 of title 28 apply in relation to Federal habeas corpus review of State capital cases in which counsel was appointed pursuant to that mechanism. These sections will also apply in Federal habeas corpus review of capital cases from a State with a mechanism certified by the Attorney General in which petitioner validly waived

counsel, petitioner retained counsel, or petitioner was found not to be indigent, as provided in section 2261(b) of title 28. Subsection (b) of 28 U.S.C. 2265 directs the Attorney General to promulgate regulations to implement the certification procedure under subsection (a) of that section.

**§ 26.21 Definitions.**

For purposes of this part, the term—  
*Appointment* means provision of counsel in a manner that is reasonably timely in light of the time limitations for seeking State and Federal postconviction review and the time required for developing and presenting claims in the postconviction proceedings.

*Appropriate State official* means the State attorney general, except that, in a State in which the State attorney general does not have responsibility for Federal habeas corpus litigation, it means the chief executive of the State.

*Indigent prisoners* means persons whose net financial resources and income are insufficient to obtain qualified counsel.

*State postconviction proceedings* means collateral proceedings in State court, regardless of whether the State conducts such proceedings after or concurrently with direct State review.

**§ 26.22 Requirements.**

The Attorney General will certify that a State meets the requirements for certification under 28 U.S.C. 2261 and 2265 if the Attorney General determines that the State has established a mechanism for the appointment of counsel for indigent prisoners under sentence of death in State postconviction proceedings that satisfies the following standards:

(a) As provided in 28 U.S.C. 2261(c) and (d), the mechanism must offer to all such prisoners postconviction counsel, who may not be counsel who previously represented the prisoner at trial unless the prisoner and counsel expressly requested continued representation, and the mechanism must provide for the entry of an order by a court of record—

(1) Appointing one or more attorneys as counsel to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer;

(2) Finding, after a hearing if necessary, that the prisoner rejected the offer of counsel and made the decision with an understanding of its legal consequences; or

(3) Denying the appointment of counsel, upon a finding that the prisoner is not indigent.

(b) The mechanism must provide for appointment of competent counsel as defined in State standards of competency for such appointments.

(1) A State's standards of competency are presumptively adequate if they meet or exceed either of the following criteria:

(i) Appointment of counsel who have been admitted to the bar for at least five years and have at least three years of postconviction litigation experience. But a court, for good cause, may appoint other counsel whose background, knowledge, or experience would otherwise enable them to properly represent the petitioner, with due consideration of the seriousness of the penalty and the unique and complex nature of the litigation; or

(ii) Appointment of counsel meeting qualification standards established in conformity with 42 U.S.C. 14163(e)(1) and (2)(A), if the requirements of 42 U.S.C. 14163(e)(2)(B), (D), and (E) are also satisfied.

(2) Competency standards not satisfying the benchmark criteria in paragraph (b)(1) of this section will be deemed adequate only if they otherwise reasonably assure a level of proficiency appropriate for State postconviction litigation in capital cases.

(c) The mechanism must provide for compensation of appointed counsel.

(1) A State's provision for compensation is presumptively adequate if the authorized compensation is comparable to or exceeds—

(i) The compensation of counsel appointed pursuant to 18 U.S.C. 3599 in Federal habeas corpus proceedings reviewing capital cases from the State;

(ii) The compensation of retained counsel in State postconviction proceedings in capital cases who meet State standards of competency sufficient under paragraph (b);

(iii) The compensation of appointed counsel in State appellate or trial proceedings in capital cases; or

(iv) The compensation of attorneys representing the State in State postconviction proceedings in capital cases, subject to adjustment for private counsel to take account of overhead costs not otherwise payable as reasonable litigation expenses.

(2) Provisions for compensation not satisfying the benchmark criteria in paragraph (c)(1) of this section will be deemed adequate only if the State mechanism is otherwise reasonably designed to ensure the availability for appointment of counsel who meet State standards of competency sufficient under paragraph (b) of this section.

(d) The mechanism must provide for payment of reasonable litigation expenses of appointed counsel. Such expenses may include, but are not limited to, payment for investigators, mitigation specialists, mental health and forensic science experts, and support personnel. Provision for reasonable litigation expenses may incorporate presumptive limits on payment only if means are authorized for payment of necessary expenses above such limits.

#### **§ 26.23 Certification process.**

(a) An appropriate State official may request in writing that the Attorney General determine whether the State meets the requirements for certification under § 26.22 of this subpart.

(b) Upon receipt of a State's request for certification, the Attorney General will make the request publicly available on the Internet (including any supporting materials included in the request) and publish a notice in the **Federal Register**—

(1) Indicating that the State has requested certification;

(2) Identifying the Internet address at which the public may view the State's request for certification; and

(3) Soliciting public comment on the request.

(c) The State's request will be reviewed by the Attorney General. The review will include consideration of timely public comments received in response to the **Federal Register** notice under paragraph (b) of this section, or any subsequent notice the Attorney General may publish providing a further opportunity for comment. The certification will be published in the **Federal Register** if certification is granted. The certification will include a determination of the date the capital counsel mechanism qualifying the State for certification was established.

(d) A certification by the Attorney General reflects the Attorney General's determination that the State capital counsel mechanism reviewed under paragraph (c) of this section satisfies chapter 154's requirements. A State may request a new certification by the Attorney General to ensure the continued applicability of chapter 154 to cases in which State postconviction proceedings occur after a change or alleged change in the State's certified capital counsel mechanism. Changes in a State's capital counsel mechanism do not affect the applicability of chapter 154 in any case in which a mechanism certified by the Attorney General existed throughout State postconviction proceedings in the case.

(e) A certification remains effective for a period of five years after the

completion of the certification process by the Attorney General and any related judicial review. If a State requests re-certification at or before the end of that five-year period, the certification remains effective for an additional period extending until the completion of the re-certification process by the Attorney General and any related judicial review.

Dated: September 11, 2013.

**Eric H. Holder, Jr.,**  
Attorney General.

[FR Doc. 2013–22766 Filed 9–20–13; 8:45 am]

**BILLING CODE P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA–R04–OAR–2009–0140; FRL–9901–10–Region 4]**

### **Approval and Promulgation of Implementation Plans; North Carolina; Removal of Stage II Gasoline Vapor Recovery Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve changes to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina Department of Environment and Natural Resources (NC DENR), Division of Air Quality on September 18, 2009, for the purpose of removing Stage II vapor control requirement contingency measures for new and upgraded gasoline dispensing facilities in the State. The September 18, 2009, SIP revision also addresses several non-Stage II related rule changes. However, action on the other portions for the September 18, 2009, SIP revision is being addressed in a separate rulemaking action. EPA has determined that North Carolina's September 18, 2009, SIP revision regarding the Stage II vapor control requirements is approvable because it is consistent with the Clean Air Act (CAA or Act).

**DATES:** *Effective Date:* This rule will be effective October 23, 2013.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2009–0140. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information regarding this action, contact Ms. Kelly Sheckler, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Sheckler's telephone number is (404) 562–9222; email address: [sheckler.kelly@epa.gov](mailto:sheckler.kelly@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

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- I. Background
- II. Final Action
- III. Statutory and Executive Order Reviews

##### **I. Background**

EPA, under the CAA Amendments of 1990, designated (pursuant to section 107(d)(1)) and classified certain counties in North Carolina, either in their entirety or portions thereof, as “moderate” ozone nonattainment areas for the 1-hour ozone national ambient air quality standards (NAAQS). Specifically, the Charlotte-Gastonia Area (comprised of Gaston and Mecklenburg Counties); the Greensboro-Winston-Salem-High Point Area (comprised of Davidson, Davis (partial), Forsyth and Guilford Counties); and the Raleigh-Durham Area (comprised of Durham, Granville (partial), and Wake Counties) were all designated as “moderate” ozone nonattainment areas for the 1-hour ozone NAAQS. The designations were based on the Areas' 1-hour ozone design values for the 1987–1989 three-year period. The “moderate” classification triggered various statutory requirements for these Areas including the Stage II vapor recovery requirements pursuant to section 182(b)(3) of the CAA.

Prior to the deadline for implementing the requirements of section 182(b)(3) of the CAA, the Charlotte-Gastonia, Greensboro-Winston-Salem-High Point and Raleigh-Durham Areas in North Carolina attained the 1-hour ozone NAAQS. North Carolina had implemented all measures then required for moderate ozone nonattainment areas under the CAA, and with three years of data (1990–1992), demonstrated compliance with the 1-hour ozone NAAQS.

Subsequently, NC DENR submitted to EPA 1-hour ozone maintenance plans and requests for redesignation for the three moderate nonattainment areas. As part of the associated 1-hour ozone maintenance plans for these areas, North Carolina provided contingency measures that included regulation 15A North Carolina Administrative Code (NCAC) 02D.0953 (hereafter referred to as rule .0953), entitled *Vapor Return Piping for Stage II Vapor Recovery*, for all new or improved gasoline tanks, and 15A NCAC 02D.0954 (hereafter referred to as rule .0954), entitled *Stage II Vapor Recovery*. These contingency measures were never activated as the Areas all continued to attain the 1-hour ozone NAAQS. EPA approved the redesignation requests and the maintenance plans for the Charlotte-Gastonia Area on July 5, 1995 (60 FR 34859), the Greensboro-Winston-Salem-High Point Area on September 9, 1993 (58 FR 47391), and the Raleigh-Durham Area on April 18, 1994 (59 FR 18300).

On September 18, 2009, NC DENR submitted a SIP revision to remove Stage II vapor control contingency measure requirements from the 1-hour maintenance plans for the Charlotte-Gastonia, Greensboro-Winston-Salem-High Point, and Raleigh-Durham Areas. In addition, the removal of rules .0953 and .0954 necessitated amendments of rules 15A NCAC 02D.0902(d)—*Applicability* (hereafter referred to as rule .0902(d)), 15A NCAC 02D.0909—*Compliance schedules for Sources in new nonattainment Areas* (hereafter referred to as rule .0909), and 15A NCAC 02D.0952—*Petitions for Alternative Controls for RACT* (hereafter referred to as rule .0952) in North Carolina's SIP.<sup>1</sup> Accordingly, NC DENR's September 18, 2009, SIP revision also changes rules .0902(d),

.0909, and .0952 to remove subparagraphs referencing the repealed Stage II rules .0953 and .0954.

On June 7, 2013, EPA published a proposed rulemaking to approve North Carolina's September 18, 2009, SIP revision related to Stage II. Detailed background for today's final rulemaking can be found in EPA's June 7, 2013, proposed rulemaking. See 78 FR 34303. The comment period for this proposed rulemaking closed on July 8, 2013. EPA did not receive any comments, adverse or otherwise, during the public comment period.

## II. Final Action

EPA is taking final action to approve the SIP revision submitted by North Carolina for the purpose of removing Stage II vapor control contingency measure requirements for new and upgraded gasoline dispensing facilities in the Charlotte-Gastonia, Greensboro-Winston-Salem-High Point, and Raleigh-Durham Areas. Specifically, this action removes Stage II rules .0953 and .0954 from the North Carolina SIP, and amends rules .0902(d), .0909, and .0952 to reflect the removal of rules .0953 and .0954 in the State's implementation plan. EPA has determined that North Carolina's September 18, 2009, SIP revision related to the State's Stage II rules is consistent with the CAA and EPA's regulations and guidance.

## III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely

affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 22, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not

<sup>1</sup> North Carolina's SIP revision also make changes to Rule 15A NCAC 02Q.0102—*Activities Exempted from permit requirements regarding New Source Performance Standards* and Rule 15A NCAC 02D.1110—*National Emission Standards for Hazardous Air Pollutants*. EPA is not taking action in today's action to approve these changes and these rules are not currently part of North Carolina's federally-approved SIP.

be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: August 29, 2013.

**Beverly H. Banister,**  
*Acting Regional Administrator, Region 4.*

40 CFR part 52 is amended as follows:

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart II—North Carolina

■ 2. Section 52.1770(c), under Table 1, is amended by revising the entries for “.0902,” “.0909,” “.0952,” “.0953,” and “.0954” to read as follows:

#### § 52.1770 Identification of plan.

\* \* \* \* \*  
(c) \* \* \*

TABLE 1—EPA APPROVED NORTH CAROLINA REGULATIONS

| State citation                          | Title/subject                                    | State effective date | EPA approval date                           | Explanation  |
|---|--|----------------------|---|--|
| *                                       | *  | *                    | *   | *  |
| <b>.0900 Volatile Organic Compounds</b> |  |                      |   |  |
| *                                       | *  | *                    | *   | *  |
| Sect .0902 .....                        | Applicability .....                              | 5/1/2013             | 9/23/2013 [Insert citation of publication]. | This approval does not include the start-up shutdown language as described in Section II. A. a. of EPA's 3/13/2013 proposed rule (78 FR 15895) |
| *                                       | *  | *                    | *   | *  |
| Sect .0909 .....                        | Compliance Schedules .....                       | 5/1/2013             | 9/23/2013 [Insert citation of publication]. |  |
| *                                       | *  | *                    | *   | *  |
| Sect .0952 .....                        | Petitions for Alternative Controls for RACT.     | 9/18/2009            | 9/23/2013 [Insert citation of publication]. |  |
| Sect .0953 .....                        | Vapor Return Piping for Stage II Vapor Recovery. | 9/18/2009            | 9/23/2013 [Insert citation of publication]. | This rule has been repealed as state effective 9/18/2009.  |
| Sect .0954 .....                        | Stage II Vapor Recovery .....                    | 9/18/2009            | 9/23/2013 [Insert citation of publication]. | This rule has been repealed as state effective 9/18/2009.  |
| *                                       | *  | *                    | *   | *  |

\* \* \* \* \*

[FR Doc. 2013–22965 Filed 9–20–13; 8:45 am]

BILLING CODE 6560–50–P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[EPA–R08–OAR–2009–0810, FRL–9901–04–Region 8]

**Approval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 PM<sub>2.5</sub> National Ambient Air Quality Standards; Prevention of Significant Deterioration Requirements for PM<sub>2.5</sub> Increments and Major and Minor Source Baseline Dates; Colorado**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving State Implementation Plan (SIP) submissions from the State of Colorado to demonstrate that the SIP meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for PM<sub>2.5</sub> on July 18, 1997 and on October 17, 2006. The CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet infrastructure requirements. The State of Colorado provided infrastructure SIP submissions on April 4, 2008 and June 4, 2010 for the 1997 and 2006 PM<sub>2.5</sub> NAAQS, respectively. In addition, EPA

is approving portions of SIP revisions submitted by the State of Colorado on May 11, 2012 and May 13, 2013. The revisions update Regulation 3 of the Air Quality Control Commission permitting requirements for the Prevention of Significant Deterioration (PSD) program to incorporate the required elements of the 2008 PM<sub>2.5</sub> NSR Implementation Rule and the 2010 PM<sub>2.5</sub> Increment Rule.

**DATES:** This final rule is effective October 23, 2013.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2009-0810. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kathy Ayala, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6142, [ayala.kathy@epa.gov](mailto:ayala.kathy@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

#### **Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The initials *CBI* mean or refer to confidential business information.
- (iii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- (iv) The initials *NAAQS* mean or refer to national ambient air quality standards.
- (v) The initials *PM* mean or refer to particulate matter.
- (vi) The initials *PM<sub>2.5</sub>* mean or refer to particulate matter with an aerodynamic

diameter of less than 2.5 micrometers (fine particulate matter).

(vii) The initials *PSD* mean or refer to Prevention of Significant Deterioration.

(viii) The initials *SIP* mean or refer to State Implementation Plan.

#### **Table of Contents**

- I. Background
- II. Response to Comments
- III. Final Action
- IV. Statutory and Executive Order Reviews

#### **I. Background**

Infrastructure requirements for SIPs are provided in section 110(a)(1) and (2) of the CAA. Section 110(a)(2) lists the specific infrastructure elements that a SIP must contain or satisfy. The elements that are the subject of this action are described in detail in our notice of proposed rulemaking (NPR) of May 23, 2013 (78 FR 30830).

In our NPR, we proposed to act on submissions from the State of Colorado to address infrastructure requirements for the 1997 and 2006 PM<sub>2.5</sub> NAAQS. The NPR proposed approval of the submissions with respect to the following infrastructure elements for the 1997 and 2006 PM<sub>2.5</sub> NAAQS: CAA Sections 110(a)(2)(A), (B), (C) with respect to minor NSR requirements, (E), (F), (G), (H), (J) with respect to the requirements of sections 121 and 127 of the Act, (K), (L), and (M). The reasons for our approval are provided in detail in the NPR.

For reasons explained in the NPR, EPA also proposed to approve the submissions for infrastructure elements (C) and (J) with respect to PSD requirements for the 1997 and 2006 PM<sub>2.5</sub> NAAQS. Concurrently, EPA proposed to approve revisions to Regulation 3 submitted by Colorado on May 11, 2012, and May 13, 2013, which incorporate the requirements of the 2008 PM<sub>2.5</sub> NSR Implementation Rule and the 2010 PM<sub>2.5</sub> Increment Rule; specifically, revisions to: Regulation 3, Part D, sections II.A.5.a and b, II.A.23.a and b, II.A.25.a.(i), a.(ii), a.(iii), and b.(i), II.A.38.c and g, II.A.42.a., and X.A.1., as submitted on May 11, 2012, and revisions to Regulation 3, Part D, sections II.A.23.c., as submitted on May 13, 2013. EPA is taking no action at this time on infrastructure element (D) for the 2006 PM<sub>2.5</sub> NAAQS.

#### **II. Response to Comments**

EPA received one comment. The commenter generally supported the EPA's proposed action. However, the commenter noted that EPA had recently promulgated revised PM<sub>2.5</sub> standards (78 FR 3086, January 15, 2013) and stated that the Colorado submissions

did not reflect these revised standards. The commenter recommended that EPA should approve the infrastructure SIPs as submitted, but that Colorado should submit a revised SIP addressing the new PM<sub>2.5</sub> standards.

**Response:** We note the commenter's general support for our action. However, we disagree with the comment to the extent that it implies that the Colorado submissions we are acting on are deficient in not addressing the newly revised 2012 PM<sub>2.5</sub> standards. Colorado's April 4, 2008 and June 4, 2010 submissions addressed infrastructure requirements for the 1997 and 2006 PM<sub>2.5</sub> NAAQS, respectively. We have evaluated the submissions based on the requirements of sections 110(a)(1) and (a)(2) and the CAA with respect to those standards. To the extent that the 2012 PM<sub>2.5</sub> NAAQS may in the future require any SIP revisions for infrastructure purposes, we will then evaluate Colorado's infrastructure submission for the 2012 PM<sub>2.5</sub> NAAQS with respect to those requirements.

#### **III. Final Action**

EPA is approving the following infrastructure elements for the 1997 and 2006 PM<sub>2.5</sub> NAAQS: CAA section 110(a)(2)(A), (B), (C) with respect to minor NSR requirements, (E), (F), (G), (H), (J) with respect to the requirements of sections 121 and 127 of the Act, (K), (L), and (M). EPA is approving infrastructure elements (C) and (J) with respect to PSD requirements for the 1997 and 2006 PM<sub>2.5</sub> NAAQS. EPA is approving revisions to Regulation 3 submitted by Colorado on May 11, 2012 and May 13, 2013, which incorporate the requirements of the 2008 PM<sub>2.5</sub> NSR Implementation Rule and the 2010 PM<sub>2.5</sub> Increment Rule; specifically, revisions to: Regulation 3, Part D, sections II.A.5.a and b, II.A.23.a and b, II.A.25.a.(i), a.(ii), a.(iii), and b.(i), II.A.38.c and g, II.A.42.a., and X.A.1., as submitted on May 11, 2012, and revisions to Regulation 3, Part D, section II.A.23.c, as submitted on May 13, 2013. EPA is taking no action at this time on infrastructure element (D) for the 2006 PM<sub>2.5</sub> NAAQS.

#### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely

approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other

required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 22, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 29, 2013.

**Howard M. Cantor,**

*Deputy Regional Administrator, Region 8.*

40 CFR Part 52 is amended to read as follows:

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart G—Colorado

- 2. Section 52.320 is amended by adding paragraph (c)(126) to read as follows:

##### § 52.320 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(126) On May 11, 2012 and May 13, 2013 the State of Colorado submitted revisions to the State Implementation Plan that incorporate the required elements of the 2008 PM<sub>2.5</sub> NSR Implementation Rule and the 2010 PM<sub>2.5</sub> Increment Rule.

(i) Incorporation by reference

(A) 5 CCR 1001–5, Regulation Number 3, *Stationary Source Permitting and Air*

*Pollutant Emission Notice Requirements, Part D, Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration, Section II, Definitions, Section II.A.5, Baseline Area, II.A.5.a. and II.A.5.b.; Section II.A.23., Major Source Baseline Date, II.A.23.a. and II.A.23.b.; II.A.25., Minor Source Baseline Date, II.A.25.a., II.A.25.b. introductory text, and II.A.25.b.(i); II.A.38, Regulated NSR Pollutant, II.A.38.c., II.A.38.g.; II.A.42., Significant, II.A.42.a.; Section X, Air Quality Limitations, X.A., Ambient Air Increments, X.A.1., effective on 12/15/11.*

(B) 5 CCR 1001–5, Regulation Number 3, *Stationary Source Permitting and Air Pollutant Emission Notice Requirements, Part D, Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration, Section II, Definitions, II.A.23., Major Source Baseline Date, II.A.23.c., effective on 2/15/13.*

- 3. Section 52.353 is amended by redesignating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

##### § 52.353 Section 110(a)(2) infrastructure requirements.

\* \* \* \* \*

(b) On April 4, 2008 James B. Martin, Executive Director, Colorado Department of Public Health and Environment, provided a submission to meet the infrastructure requirements for the State of Colorado for the 1997 PM<sub>2.5</sub> NAAQS. On June 4, 2010, Martha E. Rudolph, Executive Director, Colorado Department of Public Health and Environment, provided a submission to meet the infrastructure requirements for the State of Colorado for the 2006 PM<sub>2.5</sub> NAAQS. The State's Infrastructure SIP is approved with respect to the 1997 and 2006 PM<sub>2.5</sub> NAAQS with respect to section (110)(a)(1) and the following elements of section (110)(a)(2): (A), (B), (C) with respect to PSD and minor NSR requirements, (E), (F), (G), (H), (J) with respect to PSD requirements and the requirements of sections 121 and 127 of the Act, (K), (L), and (M).

[FR Doc. 2013–22967 Filed 9–20–13; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Part 81****[EPA-R09-OAR-2012-0936; FRL-9901-13-  
Region 9]****Designation of Areas for Air Quality  
Planning Purposes; California;  
Morongo Band of Mission Indians****AGENCY:** Environmental Protection  
Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to correct an error in a previous rulemaking that revised the boundaries between nonattainment areas in Southern California designated under the Clean Air Act for the national ambient air quality standard for one-hour ozone. EPA is also taking final action to revise the boundaries of certain Southern California air quality planning areas to designate the Indian country of the Morongo Band of Mission Indians, California as a separate air quality planning area for the one-hour and 1997 eight-hour ozone standards.

**DATES:** This rule is effective on October 23, 2013.

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-2012-0936 for this action. The index to the docket is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Ken Israels, Grants and Program Integration Office (AIR-8), U.S. Environmental Protection Agency, Region IX, (415) 947-4102, [israels.ken@epa.gov](mailto:israels.ken@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” “our,” and “Agency” refer to EPA.

**Table of Contents**

- I. Summary of Proposed Action
- II. Comments and Responses
- III. Final Action
- IV. Statutory and Executive Order Reviews

**I. Summary of Proposed Action**

On January 2, 2013 (78 FR 51), EPA proposed to correct an error in a previous rulemaking that revised the boundaries between nonattainment areas in Southern California designated under the Clean Air Act (CAA or “Act”) for the national ambient air quality standard (NAAQS or “standard”) for one-hour ozone.<sup>1</sup> EPA also proposed to revise the boundaries of certain Southern California air quality planning areas to designate the Indian country<sup>2</sup> of the Morongo Band of Mission Indians, California (“Morongo Reservation”) as a separate air quality planning area for the one-hour and 1997 eight-hour ozone standards. References herein to our “proposed rule” refer to our January 2, 2013 proposed rule.

Specifically, we proposed to correct an error in our October 7, 2003 (68 FR 57820) final action approving a request by the State of California (“California” or “State”) to shift the boundary between the South Coast Air Basin and the Southeast Desert Air Basin (which includes Coachella Valley) eastward, and thereby relocate the Banning Pass area to the South Coast Air Basin from the Southeast Desert Air Basin. As explained in our proposed rule, the “error” pertained only to the Morongo Reservation, which is located within the Banning Pass, and which is the only Indian country affected by the relevant portion of our 2003 final action.

With respect to the one-hour ozone standard, EPA’s 2003 action had the effect of moving the Morongo Reservation from the Coachella Valley portion of the “Southeast Desert Modified AQMA Area” (“Southeast Desert”) to the “Los Angeles-South Coast Air Basin Area” (“South Coast”) and changing the designations and classifications accordingly. Specifically, EPA’s 2003 action had the effect of changing the ozone nonattainment area

<sup>1</sup> Ground-level ozone is a gas that is formed by the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>) in the atmosphere in the presence of sunlight. These precursor emissions are emitted by many types of pollution sources, including power plants and industrial emissions sources, on-road and off-road motor vehicles and engines, and smaller sources, collectively referred to as area sources.

<sup>2</sup> “Indian country” as defined at 18 U.S.C. 1151 refers to: “(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.”

classification for the Banning Pass area, including the Morongo Reservation, from “Severe-17” to “Extreme”.<sup>3</sup>

In connection with the 2003 final action, we erred by failing to recognize that, while EPA had authority to change the boundary of the South Coast with respect to Indian country under CAA sections 107(d)(3)(A)–(C), 301(a) and 301(d), it is apparent from the proposed and final rules in 2003 that EPA did not recognize that it was acting under that authority or that EPA appropriately considered the effect of the action on Indian country lands. EPA recognized only that the Agency was acting on a State request under section 107(d)(3)(D) and reviewed the request accordingly. However, tribes are sovereign entities, and not political subdivisions of states. Typically, states are not approved to administer programs under the CAA in Indian country, and California has not been approved by EPA to administer any CAA programs in Indian country. With respect to the Morongo Reservation, EPA or the Morongo Tribe is the appropriate entity to initiate boundary changes, and in this instance, the Morongo Tribe initiated the change through a rulemaking request to EPA.

If EPA had considered such a boundary change with respect to the Morongo Reservation under the appropriate statutory authority (i.e., CAA sections 107(d)(3)(A)–(C), 301(a) and 301(d)), the Agency might well have declined to change the boundary with respect to the Morongo Reservation based on “planning and control considerations” given that emissions sources within the Morongo Reservation are subject to EPA jurisdiction whereas the emissions sources outside of the Reservation are subject to the jurisdiction of the South Coast Air Quality Management District (SCAQMD). In addition to the difference in jurisdiction, we might have declined to change the boundary given the associated decrease in the major source threshold and absence of a federal Indian country new source review (NSR) program for new or modified stationary sources at the time. Therefore, under CAA section

<sup>3</sup> While the one-hour ozone standard itself has been revoked, the NSR requirements that had applied to a nonattainment area for the 1997 eight-hour ozone standard based on that area’s designation and classification for the one-hour ozone standard, at the time of designation for the 1997 eight-hour ozone standard, continue to apply to the area consistent with the requirements of EPA’s phase I implementation rule governing the transition from the one-hour ozone standard to the 1997 eight-hour ozone standard and a related court decision.

110(k)(6),<sup>4</sup> we proposed to correct the error by rescinding our 2003 final action as it pertains to the Morongo Reservation and only as it pertains to the revoked one-hour ozone standard.

Second, in our proposed rule, under CAA sections 107(d)(3)(A)–(C), 301(a), and 301(d), we proposed to revise the boundaries of the Southeast Desert to designate the Morongo Reservation as a separate nonattainment area for the one-hour ozone standard and to classify the Morongo Reservation as “Severe-17,” i.e., consistent with its prior classification when it was included in the Southeast Desert.<sup>5</sup> Third, also under CAA sections 107(d)(3)(A)–(C), 301(a) and 301(d), we proposed to revise the boundaries of the South Coast to designate the Morongo Reservation as a separate nonattainment area for the 1997 eight-hour ozone standard and to classify the Morongo Reservation as “Severe-17,” i.e., consistent with its original classification when it was included in the South Coast.

In proposing the second and third actions described above, we applied the principles set forth in EPA’s policy (referred to herein as the “Tribal Designation Policy”) for establishing separate air quality designations for areas of Indian country.<sup>6</sup> Under the

Tribal Designation Policy, where EPA receives a request for a boundary change from a tribe seeking to have its Indian country designated as a separate area, the policy indicates that EPA will make decisions regarding these requests on a case-by-case basis after consultation with the tribe.

As a matter of policy, EPA believes that it is important for tribes to submit certain information, including, among other items, a formal request from an authorized tribal official; documentation of Indian country boundaries to which the air quality designation request applies; and an analysis of a number of factors (referred to as a “multi-factor analysis,”) including air quality data, emissions-related data (including source emissions data, traffic and commuting patterns, population density and degree of urbanization), meteorology, geography/topography, and jurisdictional boundaries.<sup>7</sup>

In May 2009, the Chairman of the Morongo Tribe submitted the Tribe’s request for a separate ozone nonattainment area that included a multi-factor analysis addressing air quality data, emissions data, meteorology, geography/topography, and jurisdictional boundaries.<sup>8</sup> As such, although submitted prior to release of the Tribal Designation Policy, the Morongo Tribe’s request for a boundary change to create a separate ozone nonattainment area, in conjunction with EPA’s additional analysis found in our technical support document (TSD) for the proposed rule, represents the type of formal, official request and supporting information called for in the policy.

For the proposed rule, EPA noted that the Agency had recently reviewed the Morongo Tribe’s multi-factor analysis in connection with designating the Morongo Reservation as a separate nonattainment area for the 2008 ozone standard, and concluded that EPA’s analysis and recent decision to designate the Morongo Reservation as a separate nonattainment area for the 2008 ozone standard was directly relevant to our consideration of whether to revise the boundaries of existing air quality planning areas to designate the Morongo Reservation as a separate nonattainment area for the one-hour and 1997 eight-hour ozone standards, and adopted the analysis and rationale

previously relied upon by EPA in establishing the Morongo nonattainment area for the 2008 ozone standard. In doing so, we recognized that the three standards address the same pollutant, and thus share multi-factor analyses and considerations.<sup>9</sup>

Based on our review of air quality data, meteorology and topography, we observed that the Morongo Reservation experiences transitional conditions characteristic of a mountain pass area through which pollutants are channeled from a highly urbanized metropolitan nonattainment area to the west to the relatively less developed nonattainment area to the east. Considering the three factors of air quality data, meteorology, and topography, EPA concluded that the Agency could reasonably include the Morongo Reservation in either the South Coast nonattainment area to the west, or the Southeast Desert nonattainment area to the east, as EPA has done in the past for the one-hour ozone standard and the 1997 eight-hour ozone standard.

Alternatively, EPA could establish a separate nonattainment area for the Morongo Reservation as it did for the 2008 eight-hour ozone standard.<sup>10</sup>

Taking into account the relative amount of emissions associated with activities on the Morongo Reservation and corresponding minimal contribution to regional ozone violations, we believed that under the circumstances present here, it would be appropriate to assign particular weight to the jurisdictional boundaries factor, consistent with the principles for designations of Indian country set forth in the Tribal Designation Policy. Moreover, we noted that the Tribe has invested in the development of its own air program, including operation of weather stations and an air monitoring station, and has expressed interest in development of its own permitting program. Under the jurisdictional boundaries factor, we found that redesignation of the Morongo Reservation as a separate ozone nonattainment area for the one-hour ozone and 1997 eight-hour ozone standards would be appropriate. Therefore, consistent with the designation of the Morongo Reservation for the 2008 ozone standard, we proposed to revise the boundaries of the Southeast Desert one-hour ozone nonattainment area and the boundaries

<sup>4</sup> CAA section 110(k)(6) provides that: “Whenever the Administrator determines that the Administrator’s action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.” We interpret this provision to authorize the Agency to make corrections to a promulgated regulation when it is shown to our satisfaction that (1) we clearly erred in failing to consider or inappropriately considered information made available to EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and (2) other information persuasively supports a change in the regulation. See 57 FR 56762, at 56763 (November 30, 1992).

<sup>5</sup> Sections 107(d)(3)(A)–(C) provide that EPA may initiate the redesignation process “on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate,” and “promulgate the redesignation, if any, of the area or portion thereof.” CAA section 107(d)(3) does not refer to Indian country, but consistent with EPA’s discretionary authority in CAA sections 301(a) and 301(d)(4) to directly administer CAA programs, and protect air quality in Indian country through federal implementation, EPA is authorized to directly administer sections 107(d)(3)(A)–(C) and redesignate Indian country areas.

<sup>6</sup> See memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards, to EPA Regional Air Directors, Regions I–X, dated December 20, 2011, titled “Policy for Establishing Separate Air Quality Designations for Areas of Indian Country.”

<sup>7</sup> See Tribal Designation Policy, pages 3 and 4. The Tribal Designation Policy also states that, in addition to information related to the identified factors, tribes may submit any other information that they believe is important for EPA to consider.

<sup>8</sup> See letter from Robert Martin, Chairman, Morongo Band of Mission Indians, to Deborah Jordan, Director, Air Division, EPA Region IX, dated May 29, 2009.

<sup>9</sup> EPA also noted that in using many of the same factors found in the 2008 ozone designations process, we are using factors that represent the most current information regarding meteorology, air quality, etc. in the area and therefore we believe serve the purposes of being representative for the previously established ozone standards.

<sup>10</sup> See 77 FR 30088, dated May 21, 2012.

of the South Coast 1997 eight-hour ozone nonattainment area to designate the Morongo Reservation as a separate nonattainment area for the one-hour and 1997 eight-hour ozone standards.

Please see our proposed rule and TSD for additional background information about the Morongo Reservation and the regulatory context, as well as a more detailed explanation of our rationale for the proposed actions.

## II. Comments and Responses

Our proposed rule provided for a 30-day comment period. During this period, we received comments from the South Coast Air Quality Management District (SCAQMD or “District”), the Coachella Valley Association of Governments (CVAG), and from a private citizen. All three comment letters oppose EPA’s proposed actions. We have summarized the comments and provide responses in the paragraphs that follow.

**SCAQMD Comment #1:** EPA’s primary reason for wanting to reclassify Morongo as “severe-17” appears to be based on the fact that in “extreme” ozone areas, the major source threshold for VOC and NO<sub>x</sub> is 10 tons per year, whereas in “severe-17” areas it is 25 tons per year, thereby increasing the number of new or modified sources subject to the emissions offset requirement. EPA’s sole concern appears to be the availability of emission reduction credits (ERCs) for use as offsets. We are not sure that EPA’s rationale, which appears to be based on economic considerations, is a proper basis for reclassification under CAA section 107(d)(3). Also, EPA has misinterpreted the law relative to availability of offsets for sources to be located on Morongo lands. Because Morongo is included within the South Coast District, the special provisions in state law and District rules regarding the transfer and use of inter-district and inter-basin offsets are inapplicable.

**EPA Response to SCAQMD Comment #1:** Our proposed rule proposed two separate actions—(1) an error correction (of a 2003 final action) and (2) boundary revisions (for one-hour and 1997 eight-hour ozone NAAQS). EPA considered the issue of availability of ERCs for use as offsets for new or modified sources on the Morongo Reservation in the context of the proposed error correction action, not the boundary revisions action, and the statutory basis for consideration of this issue was CAA section 110(k)(6), not section 107(d)(3).

The District is correct that, in our proposed rule, we identified restrictions in state law and District rules regarding the availability of ERCs for use to

comply with the emissions offset requirement for new or modified major sources on Morongo lands as one of the adverse regulatory consequences for the Tribe of our 2003 final action that persuaded us to propose the error correction. However, the availability of ERCs was not the only adverse regulatory effect of our 2003 action. We recognized that the primary adverse regulatory effect was the lowering of the applicable VOC and NO<sub>x</sub> major source threshold from 25 tons per year to 10 tons per year that resulted from the 2003 transfer of the Banning Pass (including the Morongo Reservation) from the Southeast Desert “severe” ozone nonattainment area to the South Coast “extreme” ozone nonattainment area. See 78 FR 51, at 54–55. The lower threshold meant that more new or modified sources proposed on Morongo lands would be considered “major” and thus subject to the emissions offset requirement in the first instance. Based on our understanding of the state and District restrictions on the use of emission reduction credits, we believed at the time of the proposed rule that the adverse regulatory effect of lowering the threshold was exacerbated by the uncertainty associated with the availability of ERCs generated outside of the Morongo Reservation to offset emissions of new or modified sources on the Morongo Reservation.

We appreciate the District’s clarification of state law and District rules regarding inter-district and inter-basin transfer of ERCs. Based on the District’s clarification, we now understand that under state law and District rules governing inter-district or inter-basin transfer of ERCs, the meaning of “District” is geographic in nature and not jurisdictional, and thus, sources on Morongo lands are considered within the “District” for the purposes of using ERCs to meet the emissions offset requirement although such sources are not subject to District jurisdiction and thus may purchase and use ERCs generated anywhere in the South Coast without prior approval from the State or District.

In light of SCAQMD’s interpretation of state and District law, we no longer find that such law presents an obstacle to permitting of new or modified stationary sources on the Morongo Reservation. While ERCs may be available for such sources in the same manner as they are for sources in the South Coast outside of the Morongo Reservation, the more fundamental, adverse consequence of lowering the major source threshold from 25 tons per year to 10 tons per year remains a sufficient adverse consequence in and of

itself to persuade us to take final action to correct our 2003 final action as it pertains to the one-hour ozone standard and as it pertains to the Morongo Reservation.

**SCAQMD Comment #2:** EPA’s current proposal is to separate the Morongo Reservation, which is currently within the South Coast Air Basin, as its own air quality planning area and to classify the area as “severe-17” for the one-hour and 1997 eight-hour ozone NAAQS. EPA should retain the Morongo Reservation in the South Coast Air Basin in accordance with EPA’s rationale for approving California’s request to revise the basin so that the Banning Pass—including Morongo—was included in the South Coast Air Basin. Now, as then, the Banning Pass—including Morongo—belongs in the South Coast Air Basin from an air quality perspective.

**EPA Response to SCAQMD Comment #2:** Our proposed rule includes two types of actions: an error correction and boundary revisions. The first action, under CAA section 110(k)(6), would correct the error by rescinding our 2003 boundary change action with respect to the Morongo Reservation and would thereby separate the Morongo Reservation from the South Coast and return the reservation back to the Southeast Desert ozone nonattainment area within which the reservation was located prior to EPA’s 2003 action, but would not establish a separate Morongo ozone nonattainment area. The second type of action, under CAA section 107(d)(3) and CAA sections 107(d)(3)(A)–(C), 301(a) and 301(d), would establish a separate Morongo ozone nonattainment area for the one-hour and 1997 eight-hour ozone NAAQS. Because we are finalizing both actions at the same time, the Morongo Reservation will not move back to the Southeast Desert nonattainment area but will instead become its own nonattainment area for the one-hour and 1997 eight-hour ozone standards.

With respect to our error correction action, the District accurately cites EPA’s rationale for approving California’s request to revise the boundaries to transfer the Banning Pass from the Southeast Desert to the South Coast in 2003: “We believe that Banning is more similar to the South Coast than the Coachella area, and that it would support efficient planning and control to move the federal boundary of the South Coast Air Basin eastward to encompass the Banning Pass area.” 68 FR 48848, at 48850 (August 15, 2003). In our proposed rule, we explain that we do not find that we erred in 2003 in reviewing the State’s request for a boundary revision, but we failed to

recognize that, to the extent that our 2003 action affected Indian country, our action involved more than a response to a State request under CAA section 107(d)(3)(D).<sup>11</sup> It also involved an EPA-initiated boundary change action under sections 107(d)(3)(A)–(C), section 301(a), and 301(d)(4) because the State is not approved to administer CAA programs in Indian country. 78 FR 51, at 54. Our proposed rule also explains how evaluation of the same criteria used to approve the State's request would have differed for Indian country. *Id.* For instance, “planning and control considerations” while seamless from the standpoint of District jurisdiction over sources on state lands, would have differed for the Morongo Reservation because, at that time, EPA had not established a nonattainment NSR program for Morongo under which to review the greater number of new or modified sources deemed “major” by virtue of the boundary change.

In effect, through its 2003 boundary change request, the State of California was voluntarily seeking to expand the geographic boundary of the area (the South Coast) subject to the most stringent requirements under the CAA. While EPA would have little reason to disapprove such a state request, there is also little reason for EPA to force Indian country located in that geographic area to be consistent with the State's voluntary request.

With respect to our proposed action to establish a separate Morongo ozone nonattainment area, we are not applying the same criteria that we used to evaluate the State's boundary change request, but rather are applying the criteria set forth in our Tribal Designations Policy. See pages 55 and 56 of our proposed rule. As described in greater detail in our proposed rule, we observe that the Morongo Reservation

experiences transitional conditions characteristic of a mountain pass area and that we could reasonably have included the Morongo Reservation in either the South Coast or the Southeast Desert or established a separate Morongo nonattainment area. Given that emissions associated with the Morongo Reservation are minimal, we believe that it is appropriate to assign particular weight to the jurisdictional boundaries factor and thus are taking final action today, consistent with our proposed action, to revise the boundaries of the South Coast and Southeast Desert nonattainment areas to designate the Morongo Reservation as a separate Morongo nonattainment area for the one-hour and 1997 eight-hour ozone standards. (The Morongo Reservation is already a separate nonattainment area for the 2008 ozone standard.)

*SCAQMD Comment #3:* SCAQMD staff is concerned about the possible effects of separating and reclassifying the Morongo Reservation. EPA's action can only be intended to facilitate the construction and operation of new or expanded major sources on Morongo lands. As the Banning Pass is directly upwind of the Coachella Valley, any significant new emissions on Morongo lands could adversely affect the Coachella Valley and its ability to maintain attainment of the ozone standard. EPA should analyze the air quality impacts of the proposed action on the Coachella Valley.

*Response to SCAQMD Comment #3:* With respect to nonattainment New Source Review (NSR), the effect of our actions today will be an increase in the major source threshold for ozone precursors, i.e., VOC and NO<sub>x</sub>, from 10 and 25 tons per year, for new or modified stationary sources proposed for construction and operation on the Morongo Reservation. As such, new or

modified stationary sources to be located at the Morongo Reservation with potentials to emit (PTE) from 10 to 25 tons per year of VOC or NO<sub>x</sub> will not be subject to the major source requirements to meet the lowest achievable emission rate (LAER) and to offset emissions increases. Conversely, with or without our actions today, such sources with PTE 25 tons per year or more of VOC or NO<sub>x</sub> will continue to be subject to major source NSR, i.e., subject to both the LAER and offset requirements. Likewise, the regulatory requirements for sources with PTE less than 10 tons per year of VOC or NO<sub>x</sub> will also remain the same.

Thus, SCAQMD is correct that the proposed actions will facilitate construction and operation of new or modified stationary sources on the Morongo Reservation with PTE from 10 to 25 tons per year of VOC or NO<sub>x</sub> to the extent that such sources will not be subject to the LAER and emissions offset requirements that otherwise would have applied to such sources if EPA were not to finalize today's actions. Such sources could be constructed and operated at the Morongo Reservation with or without today's actions, but the costs associated with construction and operation would be less if the source is not required to meet the LAER and emissions offset requirements.

To gain perspective on the potential downwind effects of one or more new or modified stationary sources with PTE from 10 to 25 tons per year of VOC or NO<sub>x</sub> on the Morongo Reservation, it is useful to compare the emissions generated within the South Coast and Coachella Valley with those generated by sources associated with the Morongo Reservation under existing conditions, as shown in the following table.

COMPARISON OF EMISSIONS ASSOCIATED WITH SOUTH COAST, COACHELLA VALLEY, AND MORONGO RESERVATION UNDER EXISTING CONDITIONS

| Pollutant             | Emissions (tons per day) |       |                               |       |                                  |       |
|-----------------------|--------------------------|-------|-------------------------------|-------|----------------------------------|-------|
|                       | South Coast <sup>a</sup> |       | Coachella Valley <sup>b</sup> |       | Morongo reservation <sup>c</sup> |       |
|                       | Stationary sources       | Total | Stationary sources            | Total | Stationary sources               | Total |
| VOC .....             | 257                      | 593   | 2.0                           | 17.7  | 0.058                            | 0.54  |
| NO <sub>x</sub> ..... | 92                       | 758   | 0.7                           | 45.2  | 0.066                            | 3.05  |

<sup>a</sup> Emissions estimates are for year 2008 as presented in table 3–1A (page 3–15) of the SCAQMD's Final 2012 Air Quality Management Plan, December 2012.

<sup>b</sup> Emissions estimates are for year 2008 as presented for the Salton Sea Air Basin portion of Riverside County in CARB's Almanac, Emission Projections Data, as published on CARB's Web site.

<sup>11</sup> As noted above, Tribes are sovereign entities, and not political subdivisions of States. Typically, states are not approved to administer programs under the CAA in Indian country, and California

has not been approved by EPA to administer any CAA programs in Indian country. With respect to the Morongo Reservation, EPA or the Tribe is the appropriate entity to initiate boundary changes, and

in this instance, the Tribe initiated the boundary change through a request to EPA.

<sup>c</sup>The source for emissions estimates from sources associated with the Morongo Reservation is table 1 (page 13) of the attachment to a letter from Robert Martin, Chairman, Morongo Band of Mission Indians, to Deborah Jordan, Director, Air Division, EPA Region IX, dated May 29, 2009. These data reflect 2006 emissions, the most current year of emissions inventoried by the Morongo. We have no reason to expect that 2008 emissions associated with the Morongo Reservation would be significantly different than those estimated for 2006, and thus, we believe that the emissions estimates for the Morongo Reservation provide a reasonable basis for comparison with the regional emissions estimates prepared for 2008. Based on the Morongo emissions inventory, on-road mobile sources account for approximately 85% to 90% of total Morongo-related emissions of VOC and NO<sub>x</sub>. Stationary sources associated with the reservation account for approximately 2% to 11% of the total with the balance emitted by area sources.

As shown in the above table, total emissions associated with the Morongo Reservation comprise 0.09% and 0.4% of the VOC and NO<sub>x</sub> emissions, respectively, associated with all sources within the South Coast. The effect of today's actions relate to the stationary source fraction of Morongo's emissions, which amount to 0.058 and 0.066 tons per day of VOC and NO<sub>x</sub>, respectively (or 21 and 24 tons *per year* of VOC and NO<sub>x</sub>, respectively), and which comprise only 0.01% and 0.009% of the VOC and NO<sub>x</sub> emissions, respectively, within the South Coast. Clearly, one or even several new or modified stationary sources within the 10 to 25 tons per year range would have minimal or no effect on Coachella Valley when compared to the overall pollutant burden passing through the Banning Pass from the South Coast to Coachella Valley. Any new or modified stationary source on the Morongo Reservation with a PTE large enough to impact Coachella Valley would almost certainly be subject to major source NSR and thereby subject to the LAER and emission offset requirements that would avoid such an impact.

*SCAQMD Comment #4:* We are concerned that EPA's actions would create an uneven playing field between sources located within the Morongo boundaries and similar nearby sources in the South Coast Air Basin, including the remainder of the Banning Pass. Indeed, sources locating on Morongo lands would also have an unfair advantage over sources in the adjacent Coachella Valley, because under SCAQMD rules even minor sources of most pollutants must obtain offsets, and these rules apply within the Coachella Valley. Moreover, major sources in both areas are subject to SCAQMD's BACT requirement, which is at least as stringent as federal LAER. While minor sources are subject to potentially less stringent BACT, and the minor source threshold in Coachella Valley is 25 tons per year, SCAQMD's BACT Guidelines for minor sources are generally the most stringent in the nation and are distinguished from the BACT for major sources only in that economic and technical feasibility may be considered. In short, new and modified stationary sources on either side of the Banning Pass, as well as in the remainder of the

Banning Pass, will be subject to more stringent standards than sources seeking to locate on Morongo lands. We are concerned that EPA's proposed action will create a "pollution island" within the Morongo area. Our concern is based on real and substantial experiences in which facilities located on Tribal lands have created problems in the adjacent communities. For example, EPA and SCAQMD have taken enforcement action against facilities located on Cabazon Tribal land near the city of Mecca in southeastern Riverside County.

*Response to SCAQMD Comment #4:* EPA notes that, with or without today's action, new or modified sources on the Morongo Reservation are subject to the requirements of EPA's Indian country NSR rule codified in CFR, Title 40, part 49 (76 FR 38748, July 1, 2011), which are in some respects less stringent than the corresponding requirements under SCAQMD's NSR rules that apply outside Indian country in both the South Coast and Coachella Valley. Specifically, under EPA's Indian country NSR rule, emissions offsets are not required for new or modified minor sources. However, with respect to control technology requirements, while the Indian country NSR rule does not require new or modified minor sources to meet BACT or LAER level of control, the rule does require EPA (or the Indian Tribe in cases where a Tribal agency is assisting EPA with administration of the program through a delegation) to conduct a case-by-case control technology review to determine the appropriate level of control, if any, necessary to assure that the NAAQS are achieved, as well as the corresponding emission limitations for the affected emission units at the new or modified source. See 40 CFR 49.154(c). In carrying out this determination, among other considerations, EPA takes into account "[t]ypical control technology or other emission reduction measures used by similar sources in surrounding areas." 40 CFR 49.154(c)(1)(ii). Thus, the corresponding control technology requirements (i.e., minor source "BACT") that SCAQMD applies to minor sources subject to its authority would inform EPA's determination regarding control technology requirements and associated emission

limitations for new or modified minor stationary sources on the Morongo Reservation.

Nonetheless, we recognize that our actions today will broaden the differences in NSR requirements in that new or modified sources on the Morongo Reservation with PTE between 10 and 25 tons per year of VOC or NO<sub>x</sub> will no longer be subject to LAER and emissions offset requirement that otherwise would have applied. We do not, however, foresee our actions as resulting in the "pollution island" effect about which SCAQMD is concerned. First, our actions today simply restore the major source threshold that had applied within the Morongo Reservation before our 2003 approval of California's boundary change. The only difference between the regulatory context during the pre-2003 period and the context that will exist upon the effective date of today's action is that new or modified stationary sources in the Banning Pass subject to SCAQMD jurisdiction with PTE between 10 and 25 are now subject to major source "BACT," which differs from minor source "BACT" under SCAQMD's NSR rules, as explained by SCAQMD above, whereas such sources were subject to minor source "BACT" prior to our approval of California's boundary change request in 2003. We have no evidence that the Morongo Reservation was a "pollution island" during the pre-2003 period when the higher threshold applied, and the subtle differences between then and now described above with respect to minor source BACT and major source BACT under SCAQMD rules argues against the possibility that the Morongo Reservation will become a "pollution island" as a result of our actions today. It is important to note that, even with our actions today, the applicable NSR requirements within the Morongo Reservation (at a 25 tons per year major source threshold) would continue to be among the most stringent in the nation in keeping with today's classification of the Morongo Reservation as a separate "severe" nonattainment area for the one-hour and 1997 ozone standards.

*SCAQMD Comment #5:* EPA may not have adequate enforcement resources to ensure ongoing compliance on Tribal lands, even if the rules are equally stringent. For example, examination of

the available information indicates that the Colmac Energy facility, which is identified as a major source under RCRA, was last inspected nearly 10 years ago. Tribes themselves also may not have adequate resources to ensure compliance. For example, in the mid-2000's, the Torrez-Martinez reservation was identified as home to at least 20 illegal dumps. Health hazards were created as a result of some of the dump material catching fire. EPA, the federal courts, the SCAQMD, the Tribe, and other organizations were all involved in attempting to resolve these issues.

*Response to SCAQMD Comment #5:* EPA's compliance and enforcement program extends to sources subject to EPA permitting jurisdiction, and to oversight of sources subject to the permitting jurisdiction of states, air districts, and tribes (where tribes have authority to issue such permits). The hypothetical prospect of new or modified stationary sources at the Morongo Reservation, whether permitted by EPA or by the Morongo Tribe (if and when the Tribe is authorized to issue such permits), will have essentially no effect on the scope of EPA's nationwide compliance and enforcement program and thus essentially no effect on the resources needed to adequately meet the demands of that program. Moreover, facility inspections, while important, represent just one method for acquiring information in connection with compliance and enforcement.<sup>12</sup> Information requests under CAA section 114, for example, represent another method. Lastly, EPA does not believe that compliance issues that have arisen in the past with one tribe in any way portend compliance issues that may arise in the future with another tribe any more than one state's past actions portend future actions taken by other states.

*SCAQMD Comment #6:* We are concerned about the potential precedential effect of this decision.

*Response to SCAQMD Comment #6:* In this action, we are determining that our 2003 approval of California's request to shift the boundary between the South Coast and Southeast Desert eastward and thereby include the

Banning Pass in the South Coast was in error as it pertains to Indian country in the Banning Pass, and because the Morongo Tribe is the only Tribe with Indian country that was affected by the eastward shift of the boundary, the direct precedential effect of today's actions is quite limited. More generally, though, our 2003 action approved a State's request, in effect, to expand the area subject to more stringent CAA requirements and conversely to shrink the area subject to less stringent CAA requirements. We should have recognized at the time, but did not, that EPA, not the State, was changing the boundary with respect to Indian country located within the expansion area and thereby imposing the more stringent CAA requirements on Indian country as well. States rarely voluntarily request boundary changes that *increase* the stringency of requirements for their sources in the affected area, and thus, we have no reason to expect that similar circumstances culminating in our 2003 action and setting the stage for today's actions exist elsewhere with respect to California or other states and other tribes. Lastly, we note that we have previously established a number of separate tribal air quality planning areas, see, e.g., the separate listings for several tribes located within Arizona and California in 40 CFR 81.303 and 40 CFR 81.305, respectively, (i.e., particularly for the 1997 and 2008 eight-hour ozone standards), and thus, today's action does not establish a new precedent but rather is consistent with previous actions.

*CVAG Comment #1:* The creation of a separate air basin for the Tribe will result in a less stringent definition of a major source threshold for New Source Review and may result in a lesser level of air pollution controls as currently established through its designation in the South Coast Air Basin. This could potentially result in the creation of a "magnet" for, and give an unfair advantage to, facilities locating at the Morongo Reservation relative to facilities in the adjacent areas under State jurisdiction.

*EPA Response to CVAG Comment #1:* CVAG is correct that the effect of today's actions will raise the applicable major source threshold for VOC and NO<sub>x</sub> from 10 tons per year to 25 tons per year for new or modified stationary sources to be located on the Morongo Reservation. This means that a new or modified stationary source proposed on the Morongo Reservation after the effective date of today's final actions with a PTE between 10 and 25 tons per year of VOC or NO<sub>x</sub> will not be subject to the same control technology (i.e., lowest

achievable control technology) and emission offset requirements that would have applied if we did not finalize our actions. As such, the applicable requirements for new or modified stationary sources on the Morongo Reservation will return to those that applied before EPA's 2003 approval of California's boundary change request. The applicable minimum requirements for new or modified sources on the Morongo Reservation will also mirror those that apply in Coachella Valley with respect to LAER and offsets, which adjoins the new Morongo air quality planning area to the east, although we recognize that California has chosen to go beyond statutory and regulatory minimum requirements with respect to other NSR requirements in both the South Coast and Coachella Valley. We have no evidence to suggest that the Morongo Reservation was a "magnet" for new emissions sources prior to our 2003 action to approve California boundary change request, when the less stringent major source threshold applied, nor do we have any reason to believe that the Reservation will become such a "magnet" as a result of EPA's actions today that simply return the Morongo Reservation to the statutory and regulatory context that applied prior to EPA's 2003 action.

*CVAG Comment #2:* Back in January 2011, CVAG sent a letter to EPA expressing concern regarding the Morongo Tribe's request for a separate ozone nonattainment area. EPA staff agreed to keep CVAG and SCAQMD apprised of EPA's actions on the Tribe's request but did not follow-through. Instead, CVAG was informed of EPA's January 2, 2013 proposed rule through another party. In May 2012, EPA designated the Morongo Reservation as a separate nonattainment area for the 2008 ozone standard. EPA is using key findings from that decision as the basis for their current proposed action. This designation action was again done without notification to or consultation with CVAG or the SCAQMD, although the proposed rule at 78 FR 55 stated that this decision will be made "after all necessary consultation with the Tribe and, as appropriate, with the involvement of other affected entities." In addition, in footnote 15 of the proposed rule, it states "EPA has consulted with the Tribe several times about this matter." This dangerously "paves the way" for the proposed action relative to the one hour and 1997 eight hour ozone standards.

*EPA Response to CVAG Comment #2:* CVAG is correct that EPA has adopted the analysis and rationale relied upon by EPA in establishing the Morongo

<sup>12</sup> To the extent that SCAQMD cites infrequent inspections at the Colmac Energy facility as an example of inadequate EPA enforcement resources, EPA notes that since 1989, under a monitoring and enforcement agreement to which SCAQMD, EPA, and the Cabazon Band of Mission Indians are signatories, SCAQMD has been allowed entry onto the Cabazon Reservation to monitor and inspect the Colmac Energy facility, and thus the frequency of EPA inspections cited by SCAQMD bears little relation to the extent of compliance oversight for the Colmac facility.

nonattainment area for the 2008 ozone standard in support of EPA's proposal to revise the boundaries of the Southeast Desert (which includes Coachella Valley) and the South Coast to designate the Morongo Reservation as a separate nonattainment area for the one-hour and 1997 eight-hour ozone standards. See pages 55 and 56 of the proposed rule.

CVAG objects to EPA's failure to notify or consult with CVAG about either the designations for the 2008 ozone standard or the actions proposed by EPA on January 2, 2013. As to the designations for the 2008 ozone standard, the process is set forth in CAA section 107 and involves (1) notification by EPA to states of the requirement to submit recommendations of areas to be listed as nonattainment, attainment, or unclassifiable; (2) submittal to EPA of state recommendations; (3) review by EPA of the recommendations; and (4) notification by EPA to states of EPA's intention to modify any state recommendation and provision of an opportunity to such state to demonstrate why such modification is inappropriate. EPA also provided a similar process for tribes to submit, and for EPA to review and modify, recommendations for their areas of Indian country. There is no requirement that EPA notify states concerning tribal recommendations related to Indian country or that EPA notify tribes of state recommendations related to lands under state jurisdiction.

As to the proposed action to revise the boundaries of the Southeast Desert and South Coast to designate the Morongo Reservation as a separate nonattainment area for the one-hour and 1997 eight-hour ozone standard, EPA acknowledges that it agreed to keep CVAG apprised of our action and failed to follow-through prior to proposing this action on January 2, 2013. While EPA regrets the oversight, we note that such notification, other than through publication of the proposed and final rule in the **Federal Register**, is not required for the type of action that we proposed.

In its January 7, 2011 letter to EPA, CVAG raised two specific substantive concerns in connection with Morongo's May 29, 2009 boundary change request: (1) inclusion of the Morongo Reservation in Coachella Valley, and resultant use of Morongo ozone monitoring data, could jeopardize Coachella Valley's ability to meet the 1997 eight-hour ozone standard by the applicable 2019 attainment date; and (2) inclusion of the Morongo Reservation in Coachella Valley would impact Coachella Valley's ability to meet PM<sub>10</sub> objectives and to continue to attain PM<sub>2.5</sub> standards. EPA's decision to

designate the Morongo Tribe as a separate nonattainment area rather than move the Reservation back into Southeast Desert (which includes Coachella Valley) alleviates both specific substantive concerns raised by CVAG in its January 7, 2011 letter to EPA. Please see our Response to SCAQMD Comment #3, above, for additional analysis concerning potential impacts on Coachella Valley of today's final actions.

Lastly, with respect to CVAG's cautionary note concerning EPA's consultation with the Tribe in connection with this action, we simply note that our proposed action, in part, derives from a request by the Morongo Tribe to create a separate nonattainment ozone area for the Tribe, and thus, it is perfectly natural and appropriate that EPA consult with the Tribe about such a matter prior to proposing action. EPA would do no less for the State if responding to a state request. EPA notes that consultation with the Tribe is also consistent with the government-to-government relationship between federally-recognized tribes and the federal government.

*CVAG Comment #3:* The Coachella Valley is exposed to frequent gusty winds with the strongest and most persistent winds typically occurring immediately to the east of Banning Pass, which is noted as a wind power generation resource area. Given the geographic location of the reservation, to the Banning Pass and the Coachella Valley, the designation will most negatively impact the Coachella Valley's air quality. Located in the Southeast Desert AQMA area, the Coachella Valley will still be required to meet the NAAQS whether we generate pollutants or they are transported to our area.

*EPA Response to CVAG Comment #3:* As explained in detail in EPA Response to SCAQMD Comment #3, EPA does not foresee any impact to air quality in Coachella Valley as a result of EPA's actions to rescind our 2003 final action, as it pertains to the Morongo Reservation, and to revise the boundaries of the Southeast Desert (in which Coachella Valley is located) and South Coast to designate the Morongo Reservation as a separate nonattainment area for the one-hour and 1997 eight-hour ozone standards. Please see EPA Response to SCAQMD Comment #3, above.

*CVAG Comment #4:* The Coachella Valley has spent decades and millions of dollars striving to achieve attainment for the PM<sub>10</sub> NAAQS and we have been patiently awaiting redesignation of the valley for the federal PM<sub>10</sub> standard. A

separate air quality planning area may adversely impact our efforts.

*EPA Response to CVAG Comment #4:* EPA's actions affect designations and classifications for the one-hour and 1997 eight-hour ozone standards. Our actions do not affect designations or classifications associated with any other NAAQS. Moreover, elevated PM<sub>10</sub> levels in Coachella Valley, unlike the South Coast where PM<sub>10</sub> exceedances are due primarily to PM<sub>10</sub> precursor pollutants (derived from direct emissions of VOC, NO<sub>x</sub> and other precursors), are "strongly tied to local fugitive dust problems."<sup>13</sup> Thus, we have no reason to anticipate new or more frequent exceedances of the PM<sub>10</sub> standard in the Coachella Valley due to the hypothetical increases in precursor VOC and NO<sub>x</sub> emissions from construction and operation of new or modified stationary sources on Morongo lands with PTEs between 10 and 25 tons per year.

*CVAG Comment #5:* In addition to the EPA's proposed action, CVAG also does not want EPA to consider any reversal of its previous decision which moved the Morongo Reservation from the Southeast Desert AQMA to the South Coast Air Basin. Such a reversal would again adversely impact our efforts to attain our federal air quality standards. Since the Morongo Reservation experiences more severe ozone air quality than the Coachella Valley, it needs to stay in the South Coast Air Basin. Designations should not be made based on adverse regulatory consequences on the affected constituent. Rather, designations should be based on ambient air quality.

*EPA Response to CVAG Comment #5:* In our proposed rule, we proposed to rescind the 2003 final action, as it pertains to the Morongo Reservation for the one-hour ozone standard, and to revise the boundaries of the Southeast Desert (Coachella Valley) and South Coast to designate the Morongo Reservation as a separate nonattainment area for the one-hour and 1997 eight-hour ozone standards. Our actions would not affect the designations or classifications of state lands, nor would they relocate the Morongo Reservation back to the Southeast Desert where it had been located prior to our 2003 final action. Thus, the ambient ozone conditions experienced on the Morongo Reservation would not be relevant in determining whether the Coachella Valley attained, or failed to attain, the ozone standards because only data from

<sup>13</sup> See page 8–10 of the 2003 South Coast Air Quality Management Plan, August 2003. EPA approved the 2003 Coachella Valley PM<sub>10</sub> SIP on November 14, 2005 (70 FR 69081.)

monitors located within Coachella Valley would be used for that purpose. In terms of the Coachella Valley's potential emissions impacts on Morongo lands, the predominantly westerly wind patterns place Coachella Valley downwind of Morongo lands and thus Coachella Valley sources do not significantly impact Morongo ozone air quality. For additional details, please see page 6 of the technical support document. With respect to the basis for our proposed error correction and proposed revision to the boundaries, please see EPA Response to SCAQMD Comment #1, above.

*CVAG Comment #6:* EPA does not have sufficient resources to ensure ongoing compliance on Indian lands or adequate field enforcement staff to monitor any new air quality planning area.

*EPA Response to CVAG Comment #6:* EPA's compliance and enforcement program extends to sources subject to EPA permitting jurisdiction, and to oversight of sources subject to the permitting jurisdiction of states, air districts, and tribes (where tribes have authority to issue such permits). The hypothetical prospect of new or modified stationary sources at the Morongo Reservation, whether permitted by EPA or by the Morongo Tribe (if and when approved for such permits), will have essentially no effect on the scope of EPA's nationwide compliance and enforcement program and thus essentially no effect on the resources needed to adequately meet the demands of that program. Moreover, CVAG provides no evidence that EPA resources are inadequate at the present time to address compliance or enforcement issues associated with emissions sources on the Morongo Reservation nor does CVAG explain how our proposed actions will result in an increase in compliance or enforcement costs to EPA.

*Private Citizen Comment #1:* The private citizen expresses support for SCAQMD's and CVAG's comments on the proposed rule, and adds that the proposed air quality planning area would be small, would be dominated by a single entity that controls its own development process, and has major air quality impacts in all directions affecting large populations. Further, the private citizen speculates that, in contrast to the current proposal, an air quality planning area dominated by a single corporation, rather than a single Tribe, would never be proposed.

*EPA Response to Private Citizen Comment #1:* Please see responses above to comments from SCAQMD and CVAG. With respect to the size of the

proposed area and impacts to surrounding areas, the proposed rule takes into account the minimal amount of emissions associated with activities on the Morongo Reservation and corresponding minimal contribution to regional ozone violations and we believe that in these circumstances it is appropriate to assign particular weight to the jurisdictional boundaries factor, and it is consistent with the principles for designations of Indian country set forth in the Tribal Designation Policy. See page 56 of the January 2, 2013 proposed rule. Lastly, we find the analogy to a corporation to be inapposite due to the fact that Tribes, unlike corporations, are sovereign entities and therefore have inherent authority to control their own development process, much like states do.

### III. Final Action

Under CAA section 110(k)(6), EPA is taking final action to correct an error in a 2003 final action that revised the boundaries between nonattainment areas in Southern California designated under the CAA for the one-hour ozone NAAQS. EPA has determined that the Agency erred in the 2003 final action to change the boundary of the South Coast Air Basin, which enlarged the basin to include all of the Banning Pass area. In taking that action, EPA failed to consider the presence of Indian country (i.e., the Morongo Reservation) located therein. EPA thus failed to consider the status of the Indian country under the appropriate statutory and regulatory provisions when it evaluated and acted upon the State's boundary change request. EPA believes that its error resulted in regulatory consequences for the Morongo Tribe that justify making a correction. Thus, EPA is rescinding the 2003 final action, as it pertains to the Morongo Reservation for the one-hour ozone standard. This action does not affect the designations and classifications of state lands.

Second, under CAA sections 107(d)(3)(A)–(C), 301(a) and 301(d), EPA is taking final action to revise the boundaries of the Southeast Desert to designate the Morongo Reservation as a separate nonattainment area for the one-hour ozone standard and to classify the Morongo Reservation as “Severe-17,” i.e., consistent with its prior classification when it was included in the Southeast Desert.

Third, also under CAA sections 107(d)(3)(A)–(C), 301(a) and 301(d), EPA is taking final action to revise the boundaries of the South Coast to designate the Morongo Reservation as a separate nonattainment area for the

1997 eight-hour ozone standard and to classify the Morongo Reservation as “Severe-17,” i.e., consistent with its original classification when it was included in the South Coast.<sup>14</sup>

EPA is redesignating the Morongo Reservation as a separate air quality planning area for the one-hour ozone and 1997 eight-hour ozone standards based on our conclusion that factors such as air quality data, meteorology, and topography do not definitively support inclusion of the Reservation in either the South Coast or the Southeast Desert air quality planning areas, that Morongo Reservation emissions sources contribute minimally to regional ozone concentrations, and that the jurisdictional boundaries factor should be given particular weight under these circumstances.

As a result of these final actions, the boundaries of the Morongo nonattainment areas for the one-hour and 1997 eight-hour ozone standards will be the same as those for the Morongo nonattainment area for the 2008 ozone standard. Lastly, as of the effective date of this action, new or modified stationary sources proposed for construction on the Morongo Reservation will be subject to the NSR major source thresholds for “severe-17” ozone nonattainment areas, rather than the more stringent thresholds for “extreme” ozone nonattainment areas.

### IV. Statutory and Executive Order Reviews

#### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is “significant” and therefore subject to OMB review and the requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a

<sup>14</sup> In our proposed rule (footnote #8 at 78 FR 53), we indicated that if we finalize our proposed action to revise the boundaries of the South Coast to designate the Morongo Reservation as a separate nonattainment area for the 1997 eight-hour ozone standard, EPA would withdraw our proposed action to reclassify the Morongo Reservation to “extreme” for the 1997 eight-hour ozone standard (74 FR 43654, August 27, 2009). (In 2010, we deferred final reclassification with respect to the Morongo Reservation (and the Pechanga Reservation) when we took final action to reclassify the South Coast for the 1997 eight-hour ozone standard (75 FR 24409, May 5, 2010).) Given today's final action and consistent with our statement from the proposed rule, EPA is withdrawing our 2009 proposed reclassification action to the extent it relates to the Morongo Reservation in the Proposed Rules section of this **Federal Register**.

material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely corrects an error in a previous rulemaking and redesignates certain air quality planning area boundaries, and thereby reinstates certain CAA designations and corresponding requirements to which the affected area had previously been subject.

#### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's

regulations in 40 CFR are listed in 40 CFR part 9.

#### C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any direct requirements on small entities. EPA is correcting an error in a previous rulemaking and redesignating certain air quality planning area boundaries, and thereby reinstating certain CAA designations and corresponding requirements to which the affected area had previously been subject. This action is intended to, among other purposes, facilitate and support the Morongo Tribe's efforts to develop a tribal air permit program by re-instating, within the Morongo Reservation, the less-stringent New Source Review major source thresholds that had applied under the area's previous "Severe-17" classification for the one-hour ozone standard and by aligning the boundaries for the Morongo nonattainment area for all three ozone NAAQS (i.e., the one-hour, the 1997 eight-hour and the 2008 ozone standards).

#### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit

analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any state, local or tribal governments or the private sector. In any event, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This action does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action would merely correct an error in a previous rulemaking and redesignate certain air quality planning area boundaries, and thereby reinstate certain CAA designations and corresponding requirements to which the affected area had previously been subject, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” are defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.” Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation.

EPA has concluded that this action would have tribal implications. In 2009, the Morongo Tribe requested that EPA create a separate area for the Morongo

Reservation in part due to the adverse regulatory impacts resulting from the Agency’s 2003 boundary change action. EPA consulted with representatives of the Morongo Tribe prior to, and following, the Tribe’s 2009 boundary change request, concerning the issues covered herein. In today’s action, EPA is responding to the Tribe’s 2009 boundary change request and is taking final action that would eliminate the adverse regulatory impacts arising from EPA’s 2003 boundary change action. As described herein, we agree with the Tribe that the boundary should be corrected to reflect their concerns. This action will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Rather, the proposed action would relieve the Tribe of the additional requirements that flowed from the boundary change and corresponding change in CAA designations and classifications. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045: “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this rule present a disproportionate risk to children.

*H. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities

unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve establishment of technical standards, and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this action.

*I. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment. In this action, EPA is taking final action to correct an error in a previous rulemaking and redesignate certain air quality planning area boundaries, and thereby reinstate certain CAA designations and corresponding requirements to which the affected area had previously been subject.

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

#### K. Petitions for Review of this Action

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *November 22, 2013*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, National parks, Ozone, Wilderness areas.

Dated: September 4, 2013.

**Jared Blumenfeld**,  
Regional Administrator,  
Region IX.

40 CFR part 81 is amended as follows:

#### PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

#### Subpart C—[AMENDED]

■ 2. Section 81.305 is amended as follows:

■ a. In the table for “California-Ozone (1-Hour Standard)” by revising the entry

CALIFORNIA—OZONE (1-HOUR STANDARD)<sup>4</sup>

for “Los Angeles-South Coast Air Basin Area”, by adding a new entry for “Morongo Band of Mission Indians” before the “Monterey Bay Area” entry, and by adding footnotes 5 and 6;

■ b. In the table for “California—1997 8-Hour Ozone NAAQS (Primary and Secondary)” by revising the entries for “Los Angeles-South Coast Air Basin, CA”, by adding a new entry for “Morongo Band of Mission Indians” before the “Los Angeles and San Bernardino Counties (Western Mojave Desert), CA” entry, and by adding footnotes (d) and (e).

The revisions and additions read as follows:

#### § 81.305 California.

\* \* \* \* \*

| Designated area  | Designation       |                  | Classification    |          |
|--|-------------------|------------------|-------------------|----------|
|  | Date <sup>1</sup> | Type             | Date <sup>1</sup> | Type     |
| * * *  |                   |                  |                   |          |
| Los Angeles-South Coast Air Basin Area <sup>5</sup> .....  | 11/15/90          | Nonattainment .. | 11/15/90          | Extreme. |
| Los Angeles County (part) .....  | 11/15/90          | Nonattainment .. | 11/15/90          | Extreme. |
| That portion of Los Angeles County which lies south and west of a line described as follows:   |                   |                  |                   |          |
| 1. Beginning at the Los Angeles-San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian;   |                   |                  |                   |          |
| 2. then north along the range line common to Range 8 West and Range 9 West;  |                   |                  |                   |          |
| 3. then west along the Township line common to Township 4 North and Township 3 North;  |                   |                  |                   |          |
| 4. then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West;  |                   |                  |                   |          |
| 5. then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West;             |                   |                  |                   |          |
| 6. then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West); |                   |                  |                   |          |
| 7. then west along the Township line common to Township 7 North and Township 6 North;  |                   |                  |                   |          |
| 8. then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West;  |                   |                  |                   |          |
| 9. then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 7 North and Range 16 West;   |                   |                  |                   |          |
| 10. then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North);                                       |                   |                  |                   |          |

CALIFORNIA—OZONE (1-HOUR STANDARD)<sup>4</sup>—Continued

| Designated area  | Designation       |                  | Classification    |            |
|--|-------------------|------------------|-------------------|------------|
|  | Date <sup>1</sup> | Type             | Date <sup>1</sup> | Type       |
| 11. then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant;                    |                   |                  |                   |            |
| 12. then west and north along this land grant boundary to the Los Angeles-Kern County boundary.  |                   |                  |                   |            |
| Orange County .....  | 11/15/90          | Nonattainment .. | 11/15/90          | Extreme.   |
| Riverside County (part) .....  | 11/15/90          | Nonattainment .. | 11/15/90          | Extreme.   |
| That portion of Riverside County which lies to the west of a line described as follows:  |                   |                  |                   |            |
| 1. Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian;      |                   |                  |                   |            |
| 2. then east along the Township line common to Township 8 South and Township 7 South;  |                   |                  |                   |            |
| 3. then north along the range line common to Range 5 East and Range 4 East;  |                   |                  |                   |            |
| 4. then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East;                    |                   |                  |                   |            |
| 5. then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East;   |                   |                  |                   |            |
| 6. then west along the Township line common to Township 5 South and Township 6 South;  |                   |                  |                   |            |
| 7. then north along the range line common to Range 4 East and Range 3 East;  |                   |                  |                   |            |
| 8. then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East;  |                   |                  |                   |            |
| 9. then north along the range line common to Range 2 East and Range 3 East to the Riverside-San Bernardino County line.  |                   |                  |                   |            |
| San Bernardino County (part) .....   | 11/15/90          | Nonattainment .. | 11/15/90          | Extreme.   |
| That portion of San Bernardino County which lies south and west of a line described as follows:  |                   |                  |                   |            |
| 1. Beginning at the San Bernardino-Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian; |                   |                  |                   |            |
| 2. then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino-Los Angeles County boundary.  |                   |                  |                   |            |
| Morongo Band of Mission Indians <sup>6</sup> .....   | 11/15/90          | Nonattainment .. | 11/15/90          | Severe-17. |
| * * * *  |                   |                  |                   |            |

<sup>1</sup> This date is October 18, 2000 unless otherwise noted.

<sup>4</sup> The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in California. The Monterey Bay, San Diego, and Santa Barbara-Santa Maria-Lompoc areas are maintenance areas for the 1-hour NAAQS for purposes of 40 CFR part 51, subpart X.

<sup>5</sup> Excludes Morongo Band of Mission Indians' Indian country in Riverside County.

<sup>6</sup> Includes Indian country of the tribe listed in this table. Information pertaining to areas of Indian country in this table is intended for CAA planning purposes only and is not an EPA determination of Indian country status or any Indian country boundary. EPA lacks the authority to establish Indian country land status, and is making no determination of Indian country boundaries, in this table.

\* \* \* \*

## CALIFORNIA—1997 8-HOUR OZONE NAAQS (PRIMARY AND SECONDARY)

| Designated area   | Designation <sup>a</sup> |                     | Classification    |                    |
|---|--------------------------|---------------------|-------------------|--------------------|
|   | Date <sup>1</sup>        | Type                | Date <sup>1</sup> | Type               |
| * * * *   |                          |                     |                   |                    |
| Los Angeles—South Coast Air Basin, CA: <sup>d</sup> ..... |                          | Nonattainment ..... | ( <sup>2</sup> )  | Subpart 2/Extreme. |
| Los Angeles County (part) .....                           |                          | Nonattainment ..... | ( <sup>2</sup> )  | Subpart 2/Extreme. |

## CALIFORNIA—1997 8-HOUR OZONE NAAQS (PRIMARY AND SECONDARY)—Continued

| Designated area  | Designation <sup>a</sup> |                     | Classification    |                      |
|--|--------------------------|---------------------|-------------------|----------------------|
|  | Date <sup>1</sup>        | Type                | Date <sup>1</sup> | Type                 |
| That portion of Los Angeles County which lies south and west of a line described as follows: Beginning at the Los Angeles-San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian; then north along the range line common to Range 8 West and Range 9 West; then west along the Township line common to Township 4 North and Township 3 North; then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West; then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West; then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West); then west along the Township line common to Township 7 North and Township 6 North; then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West; then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 7 North and Range 16 West; then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary. |                          |                     |                   |                      |
| Orange County .....  | .....                    | Nonattainment ..... | ( <sup>2</sup> )  | Subpart 2/Extreme.   |
| Riverside County (part) .....  | .....                    | Nonattainment ..... | ( <sup>2</sup> )  | Subpart 2/Extreme.   |
| That portion of Riverside County which lies to the west of a line described as follows: Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian; then east along the Township line common to Township 8 South and Township 7 South; then north along the range line common to Range 5 East and Range 4 East; then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East; then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East; then west along the Township line common to Township 5 South and Township 6 South; then north along the range line common to Range 4 East and Range 3 East; then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East; then north along the range line common to Range 2 East and Range 3 East; to the Riverside-San Bernardino County line.   |                          |                     |                   |                      |
| Pechanga Reservation <sup>c</sup> .....  | .....                    | Nonattainment ..... | ( <sup>2</sup> )  | Subpart 2/Severe-17. |
| San Bernardino County (part) .....   | .....                    | Nonattainment ..... | ( <sup>2</sup> )  | Subpart 2/Extreme.   |
| That portion of San Bernardino County which lies south and west of a line described as follows: Beginning at the San Bernardino-Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian; then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino-Los Angeles County boundary.   |                          |                     |                   |                      |
| Morongo Band of Mission Indians <sup>e</sup> .....   | .....                    | Nonattainment ..... | .....             | Subpart 2/Severe-17. |
| * * * * *  |                          |                     |                   |                      |

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.

<sup>c</sup> The use of reservation boundaries for this designation is for purposes of CAA planning only and is not intended to be a federal determination of the exact boundaries of the reservations. Nor does the specific listing of the Tribes in this table confer, deny, or withdraw Federal recognition of any of the Tribes listed or not listed.

<sup>d</sup> Excludes Morongo Band of Mission Indians' Indian country in Riverside County.

<sup>e</sup> Includes Indian country of the tribe listed in this table. Information pertaining to areas of Indian country in this table is intended for CAA planning purposes only and is not an EPA determination of Indian country status or any Indian country boundary. EPA lacks the authority to establish Indian country land status, and is making no determination of Indian country boundaries, in this table.

<sup>1</sup> This date is June 15, 2004, unless otherwise noted.

<sup>2</sup> This date is June 4, 2010.

\* \* \* \* \*

[FR Doc. 2013-22873 Filed 9-20-13; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Part 6

RIN 0906-AA77

#### Federal Tort Claims Act (FTCA) Medical Malpractice Program Regulations: Clarification of FTCA Coverage for Services Provided to Non-Health Center Patients

**AGENCY:** Health Resources and Services Administration (HRSA), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the current regulatory text of the regulations for FTCA Coverage of Certain Grantees and Individuals with the key text and examples of activities that have been determined, consistent with provisions of the existing regulation, to be covered by the FTCA, as previously published in the September 25, 1995 **Federal Register** Notice (September 1995 Notice). Additionally, HRSA has added examples of services covered under the FTCA involving individual emergency care provided to a non-health center patient and updated the September 1995 Notice immunization example to include events to immunize individuals against infectious illnesses. The amended regulation will supersede the September 1995 Notice.

**DATES:** *Effective Date:* The amendments in this final rule are effective December 23, 2013.

**FOR FURTHER INFORMATION CONTACT:** Suma Nair, Director, Office of Quality and Data, Bureau of Primary Health Care, Health Resources and Services Administration, U.S. Department of Health and Human Services, 5600 Fishers Lane, Room 6A-55, Rockville, Maryland 20857; Phone: (301) 594-0818.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 224(a) of the Public Health Service (PHS) Act (42 U.S.C. 233(a)) provides that the remedy against the United States under the Federal Tort Claims Act (FTCA) for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by any commissioned officer or employee of the PHS while acting within the scope of his office or employment, shall be exclusive of any

other related civil action or proceeding. The Federally Supported Health Centers Assistance Act of 1992 (Public Law 102-501), as amended in 1995 (FSHCAA) (42 U.S.C. 233(g)-(n)), provides that, subject to its provisions, certain entities receiving funds under section 330 of the PHS Act, as well as any officers, governing board members, employees, and certain contractors of these entities, may be deemed by the Secretary to be employees of the PHS for the purposes of this medical malpractice liability protection.

A final rule implementing Public Law 102-501 was published in the **Federal Register** (60 FR 22530) on May 8, 1995, and added a new part 6 to 42 CFR Chapter I, Subchapter A. This rule describes the eligible entities and the covered individuals who are or may be determined by the Secretary to be within the scope of the FTCA protection afforded by the Act.

Section 6.6, also published in the May 8, 1995 rule, describes acts and omissions that are covered by FSHCAA (covered activities or covered services). The language of subsection 6.6(d) matches the statutory criteria that may support a determination of coverage for services provided to individuals who are not patients of the covered entity.

Subsection 6.6(e) provides examples of situations within the scope of subsection 6.6(d). Questions were raised, however, about the specific situations encompassed by 6.6(d) and 6.6(e) and about the process for the Secretary to make the determinations provided by those subsections. In response, HRSA decided that it would be impractical and burdensome to require a separate application and determination of coverage for certain situations described in the examples set forth in 6.6(e), as further discussed in the September 1995 Notice (60 FR 49417). For those situations, it was determined that the activities described in the September 1995 Notice are covered under 42 CFR 6.6(d) without the need for a separate application, so long as other requirements for coverage are met, such as a determination that the entity is a covered entity, a determination that the individual is a covered individual, and a determination that the acts or omissions by those individuals occur within the scope of employment.

##### B. Notice of Proposed Rulemaking

HRSA published a Notice of Proposed Rulemaking (NPRM) on February 28, 2011. The NPRM proposed:

(1) To replace the current regulatory text at 42 CFR 6.6(e) of the regulations at 42 CFR part 6 ("FTCA Coverage of

Certain Grantees and Individuals") with key text and examples of activities that have been determined, consistent with provisions of the existing regulation, to be covered by FTCA, as previously published in the September 1995 Notice, in 42 CFR 6.6(e);

(2) To update the "Immunization Campaign" example to clarify that this covered situation includes events to immunize individuals against infectious illnesses and does not limit coverage to childhood vaccinations; and

(3) To add the following new example as subsection 6.6(e)(4) to set forth its determination of FTCA coverage for services rendered to non-health center patients in certain individual emergency situations. This addition is expected to provide assurance of FTCA coverage in these situations and encourage reciprocal assistance by non-health center clinicians for health center patients in similar emergencies.

##### C. Comments in Response to the NPRM

HRSA received comments from 12 organizations and individuals in response to the NPRM. All of the comments submitted were in favor of the proposed rule. The major comments are summarized as follows:

(1) Clarify whether health centers that participate in health fairs are covered: Several commentators requested that HRSA modify Paragraph 6.6(e)(1)(iii) to clarify that health centers that conduct or *participate* in health fairs are covered.

(2) Clarify whether health centers that participate in immunization campaigns are covered:

Several commentators requested that HRSA modify paragraph 6.6(e)(1)(iv), Immunization Campaigns, to clarify that health centers that conduct or *participate* in immunization campaigns are covered.

(3) Amend the proposed new paragraph 6.6(e)(4), addressing individual emergency situations, by adding the term "urgent situations," and the phrase, "as determined by the health center provider at the scene of the incident."

Several commentators requested that HRSA modify proposed paragraph 6.6(e)(4) to include urgent situations and to more clearly define what would constitute an emergency or urgent situation. Additionally, commentators requested that the phrase, "as determined by the health center provider at the scene of the incident," also be added to 6.6(e)(4).

(4) Clarify, define, and/or delete the term "after hours" in paragraph 6.6(e)(3):

Several commentators requested that HRSA provide clarification or define the term “after hours” utilized in paragraph 6.6(e)(3), “Coverage-Related Activities.”

(5) Set forth a presumption of FTCA coverage for all services within an approved scope of project:

Several commentators requested that HRSA assert a presumption of coverage for all providers’ services and activities included within the health center’s federally approved scope of project.

#### D. Agency Analysis and Decision

(1) Clarify whether health centers that participate in health fairs are covered: HRSA concurs with the comment and will add the phrase “or participate in” to paragraph 6.6(e)(1)(iii) of the final rule. The paragraph will therefore read “Health Fairs: On behalf of the health center, health center staff conduct or participate in an event to attract community members for purposes of performing health assessments. Such events may be held in the health center, outside on its grounds, or elsewhere in the community.”

(2) Clarify whether health centers that participate in immunization campaigns are covered:

HRSA concurs with the comment and will add the phrase “or participate in” to example 6.6(e)(1)(iv) of the final rule. The paragraph will therefore read, “Immunization Campaign: On behalf of the health center, health center staff conduct or participate in an event to immunize individuals against infectious illnesses. Such events may be held in the health center, outside on its grounds, or elsewhere in the community.”

(3) Add to the proposed new paragraph 6.6(e)(4), addressing individual emergency situations, the term “urgent situations,” and the phrase, “as determined by the health center provider at the scene of the incident.” HRSA has considered the statutory language, its regulatory implementation, and the legislative history of the FSHCAA and is declining to adopt additional recommendations at this time, as these additions appear to substantially change the scope of the proposed regulation and introduce novel legal issues that were not intended by, and have not been fully addressed by, this rulemaking process.

(4) Clarify, define, and/or delete the term “after hours” in paragraph 6.6(e)(3):

HRSA has considered the statutory language, its regulatory implementation, and the legislative history of the FSHCAA and is declining to adopt additional recommendations at this

time, as these additions appear to substantially change the scope of the proposed regulation and introduce novel legal issues that were not intended by, and have not been fully addressed by, this rulemaking process. The original scope of this rule was to add an emergency situations example and to align the original immunization campaign example’s language with HRSA’s historical interpretation of that specific example. It is not within the scope of this rule, nor was it the intention of HRSA, to make substantial and material changes to other well-established examples that were congressionally approved. Moreover, it is not within the scope of this rule, nor was it HRSA’s intention, to modify and expand the other examples beyond HRSA’s historical interpretation of the established examples.

(5) Set forth a presumption of FTCA coverage for all services within the federally approved scope of project: HRSA declines to incorporate the suggested language, as the authorizing legislation, the FSHCAA, section 224(g)–(n) of the Public Health Service Act (42 U.S.C. 233(g)–(n)), does not expressly confer authority on the Secretary to extend such a presumption, and the addition of such a presumption introduces novel legal issues that were not intended by, and have not been fully addressed by, this rulemaking process.

#### Federalism

HRSA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. HRSA has determined that the final rule does not contain policies that have substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Accordingly, HRSA has concluded that the final rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

#### Other Impacts

HRSA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential

economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). This rule is not economically significant under section 3(f) of Executive Order 12866 and is not being treated as a “significant regulatory action” under section 3(f). Accordingly, the rule has not been reviewed by the Office of Management and Budget.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this final rule simply updates an existing regulation to add further details to the description of certain situations that are covered by the FTCA, and because such coverage is provided for under federal law, HRSA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing “any rule that includes any federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” HRSA does not expect this final rule to result in any one-year expenditure that would meet or exceed this amount.

#### Paperwork Reduction Act

There are no new requirements for information collection associated with this amendment.

#### List of Subjects in 42 CFR Part 6

Emergency medical services, Health care, Health facilities, Tort claims.

Dated: September 12, 2013.

**Mary K. Wakefield,**

*Administrator, Health Resources and Services Administration.*

Approved: September 16, 2013.

**Kathleen Sebelius,**

*Secretary.*

In consideration of the foregoing, the Department Health and Human Services (HHS), Health Resources and Services Administration (HRSA) amends 42 CFR part 6 as follows:

#### PART 6—FEDERAL TORT CLAIMS ACT COVERAGE OF CERTAIN GRANTEEES AND INDIVIDUALS

■ 1. The authority citation for part 6 continues to read as follows:

**Authority:** Sections 215 and 224 of the Public Health Service Act, 42 U.S.C. 216 and 233.

■ 2. Amend § 6.6 by adding paragraph (e)(4) to read as follows:

**§ 6.6 Covered acts and omissions.**

\* \* \* \* \*

(e) \* \* \*

(4) For the specific activities described in this paragraph (e)(4), when carried out by an entity (and its eligible personnel) that has been covered under paragraph (c) of this section, the Department has determined that coverage is provided under paragraph (d) of this section, without the need for specific application for an additional coverage determination under paragraph (d) of this section, if the activity or arrangement in question fits squarely within these descriptions; otherwise, the health center should seek a particularized determination of coverage.

(i) *Community-Wide Interventions.*

(A) *School-Based Clinics:* Health center staff provide primary and preventive health care services at a facility located in a school or on school grounds. The health center has a written affiliation agreement with the school.

(B) *School-Linked Clinics:* Health center staff provide primary and preventive health care services, at a site not located on school grounds, to students of one or more schools. The health center has a written affiliation agreement with each school.

(C) *Health Fairs:* On behalf of the health center, health center staff conduct or participate in an event to attract community members for purposes of performing health assessments. Such events may be held in the health center, outside on its grounds, or elsewhere in the community.

(D) *Immunization Campaigns:* On behalf of the health center, health center staff conduct or participate in an event to immunize individuals against infectious illnesses. The event may be held at the health center, schools, or elsewhere in the community.

(E) *Migrant Camp Outreach:* Health center staff travel to a migrant farmworker residence camp to conduct intake screening to determine those in need of clinic services (which may mean health care is provided at the time of such intake activity or during subsequent clinic staff visits to the camp).

(F) *Homeless Outreach:* Health center staff travel to a shelter for homeless persons, or a street location where homeless persons congregate, to conduct intake screening to determine

those in need of clinic services (which may mean health care is provided at the time of such intake activity or during subsequent clinic staff visits to that location).

(ii) *Hospital-Related Activities.* Periodic hospital call or hospital emergency room coverage is required by the hospital as a condition for obtaining hospital admitting privileges. There must also be documentation for the particular health care provider that this coverage is a condition of employment at the health center.

(iii) *Coverage-Related Activities.* As part of a health center's arrangement with local community providers for after-hours coverage of its patients, the health center's providers are required by their employment contract to provide periodic or occasional cross-coverage for patients of these providers.

(iv) *Coverage in Certain Individual Emergencies.* A health center provider is providing or undertaking to provide covered services to a health center patient within the approved scope of project of the center, or to an individual who is not a patient of the health center under the conditions set forth in this rule, when the provider is then asked, called upon, or undertakes, at or near that location and as the result of a non-health center patient's emergency situation, to temporarily treat or assist in treating that non-health center patient. In addition to any other documentation required for the original services, the health center must have documentation (such as employee manual provisions, health center bylaws, or an employee contract) that the provision of individual emergency treatment, when the practitioner is already providing or undertaking to provide covered services, is a condition of employment at the health center.

[FR Doc. 2013-22993 Filed 9-20-13; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 20**

[Docket No. FWS-HQ-MB-2013-0057; FF09M21200-134-FXMB1231099BPP0]

**RIN 1018-AY87**

**Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits for general waterfowl seasons and those early seasons for which States previously deferred selection. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits the taking of designated species during the 2013-14 season.

**DATES:** This rule is effective on September 21, 2013.

**ADDRESSES:** You may inspect comments received on the migratory bird hunting regulations during normal business hours at the Service's office in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, VA. You may obtain copies of referenced reports from the street address above, or from the Division of Migratory Bird Management's Web site at <http://www.fws.gov/migratorybirds/>, or at <http://www.regulations.gov> at Docket No. FWS-HQ-MB-2013-0057.

**FOR FURTHER INFORMATION CONTACT:** Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358-1714.

**SUPPLEMENTARY INFORMATION:**

**Regulations Schedule for 2013**

On April 9, 2013, we published in the *Federal Register* (78 FR 21200) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2013-14 regulatory cycle relating to open public meetings and *Federal Register* notifications were also identified in the April 9 proposed rule. Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings. Subsequent documents will refer only to numbered items requiring attention. Therefore, it is important to note that we omit those items requiring no attention, and remaining numbered items might be discontinuous or appear incomplete.

On June 14, 2013, we published in the *Federal Register* (78 FR 35844) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The June 14 supplement also provided detailed information on the 2013-14 regulatory schedule and announced the Service Regulations Committee (SRC) and Flyway Council meetings.

On June 19 and 20, 2013, we held open meetings with the Flyway Council Consultants where the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2013–14 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2013–14 regular waterfowl seasons.

On July 26, 2013, we published in the **Federal Register** (78 FR 45376) a third document specifically dealing with the proposed frameworks for early-season regulations. On August 23, 2013, we published in the **Federal Register** (78 FR 52658) a final rule that contained final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits. Subsequently, on August 28, 2013, we published a final rule in the **Federal Register** (78 FR 53200) amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

On July 31–August 1, 2013, we held open meetings with the Flyway Council Consultants at which the participants reviewed the status of waterfowl and developed recommendations for the 2013–14 regulations for these species. Proposed hunting regulations were discussed for late seasons. We published the proposed frameworks for late-season regulations (primarily hunting seasons that start after the Saturday nearest September 24 and most waterfowl seasons not already established) in an August 22, 2013, **Federal Register** (78 FR 52338). We published final late-season frameworks for migratory game bird hunting regulations, from which State wildlife conservation agency officials selected late-season hunting dates, hours, areas, and limits for 2013–14, in a late September 2013, **Federal Register**.

The final rule described here is the final in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations for 2013–14 and deals specifically with amending subpart K of 50 CFR part 20. It sets hunting seasons, hours, areas, and limits

for species subject to late-season regulations and those for early seasons that States previously deferred.

#### **National Environmental Policy Act (NEPA)**

The programmatic document, “Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139),” filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being “Duck Hunting Regulations for 2013–14,” with its corresponding August 19, 2013, finding of no significant impact. In addition, an August 1985 environmental assessment entitled “Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands” is available from the address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

#### **Endangered Species Act Consideration**

Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), provides that, “The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act” (and) shall “insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. . . .” Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions

resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

#### **Regulatory Planning and Review (Executive Orders 12866 and 13563)**

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has reviewed this rule and has determined that this rule is significant because it would have an annual effect of \$100 million or more on the economy.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

An economic analysis was prepared for the 2013–14 season. This analysis was based on data from the 2011 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) issue restrictive regulations allowing fewer days than those issued during the 2012–13 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2012–13 season. For the 2013–14 season, we chose Alternative 3, with an estimated consumer surplus across all flyways of \$317.8–\$416.8 million. We also chose alternative 3 for the 2009–10, the 2010–11, the 2011–12, and the 2012–13 seasons. The 2013–14 analysis is part of the record for this rule and is available at <http://www.regulations.gov> at Docket No. FWS–HQ–MB–2013–0057.

#### **Regulatory Flexibility Act**

The annual migratory bird hunting regulations have a significant economic

impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, 2008, and 2013. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2013 Analysis was based on the 2011 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately \$1.5 billion at small businesses in 2013. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**) or from our Web site at <http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs> or at <http://www.regulations.gov> at Docket No. FWS-HQ-MB-2013-0057.

#### **Small Business Regulatory Enforcement Fairness Act**

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule will have an annual effect on the economy of \$100 million or more. However, because this rule establishes hunting seasons, we are not deferring the effective date under the exemption contained in 5 U.S.C. 808(1).

#### **Paperwork Reduction Act**

This final rule does not contain any new information collection that requires approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has reviewed and approved the information collection requirements associated with migratory bird surveys and assigned the following OMB control numbers:

- 1018-0010—Mourning Dove Call Count Survey (expires 4/30/2015).
- 1018-0019—North American Woodcock Singing Ground Survey (expires 4/30/2015).
- 1018-0023—Migratory Bird Surveys (expires 4/30/2014). Includes

Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.

#### **Unfunded Mandates Reform Act**

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

#### **Civil Justice Reform—Executive Order 12988**

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

#### **Takings Implication Assessment**

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act (16 U.S.C. 703–711), does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule allows hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

#### **Energy Effects—Executive Order 13211**

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

#### **Government-to-Government Relationship With Tribes**

In accordance with the President's memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 9 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on

Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2013–14 migratory bird hunting season. The resulting proposals were contained in a separate August 2, 2013, proposed rule (78 FR 47136). By virtue of these actions, we have consulted with Tribes affected by this rule.

#### **Federalism Effects**

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### **Regulations Promulgation**

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that, when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We find that “good cause” exists, within the terms of

5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–711), these regulations will take effect less than 30 days after publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

#### List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: September 12, 2013.

**Rachel Jacobson,**

*Principal Assistant Deputy Secretary for Fish and Wildlife and Parks.*

For the reasons set out in the preamble, title 50, chapter I, subchapter

B, part 20, subpart K of the Code of Federal Regulations is amended as follows:

#### PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

**Authority:** Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j; Pub. L. 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

**Note:** The following annual regulations provided for by §§ 20.104, 20.105, 20.106, 20.107, and 20.109 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

■ 2. Section 20.104 is amended by:

■ a. Revising the introductory paragraphs;

■ b. Adding entries for the following States in alphabetical order to the table;

■ c. Revising footnotes (1), (2), and (6) following the table; and

■ d. Adding footnotes (19) and (20) following the table.

The revisions and additions read as follows:

#### § 20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 22, 2013 (78 FR 52338) and August 23, 2013 (78 FR 52658), **Federal Registers**.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

**Note:** The following seasons are in addition to the seasons published previously in the August 28, 2013, **Federal Register** (78 FR 53200).

|                                | Sora and Virginia rails             | Clapper & King rails               | Woodcock                          | Common snipe                        |
|--------------------------------|-------------------------------------|------------------------------------|-----------------------------------|-------------------------------------|
| Daily bag limit .....          | 25 (1)                              | 15 (2)                             | 3                                 | 8                                   |
| Possession limit .....         | 75 (1)                              | 45 (2)                             | 9                                 | 24                                  |
| <b>ATLANTIC FLYWAY</b>         |                                     |                                    |                                   |                                     |
| <i>Massachusetts</i> (6) ..... | Sept. 2–Nov. 9 .....                | Closed .....                       | Oct. 2–Oct. 26 & Oct. 28–Nov. 16. | Sept. 2–Dec. 16.                    |
| <b>MISSISSIPPI FLYWAY</b>      |                                     |                                    |                                   |                                     |
| <i>Louisiana</i>               |                                     |                                    |                                   |                                     |
| West Zone .....                | Sept. 14–Sept. 29 & Nov. 9–Jan. 1.  | Sept. 14–Sept. 29 & Nov. 9–Jan. 1. | Dec. 18–Jan. 31 .....             | Nov. 9–Dec. 15 & Dec. 21–Feb. 28.   |
| East Zone .....                | Sept. 14–Sept. 29 & Nov. 9–Jan. 1.  | Sept. 14–Sept. 29 & Nov. 9–Jan. 1. | Dec. 18–Jan. 31 .....             | Nov. 9–Dec. 8 & Dec. 14–Feb. 28.    |
| Coastal Zone .....             | Sept. 14–Sept. 29 & Nov. 9–Jan. 1.  | Sept. 14–Sept. 29 & Nov. 9–Jan. 1. | Dec. 18–Jan. 31 .....             | Nov. 2–Dec. 1 & Dec. 14–Feb. 28.    |
| <i>Tennessee</i>               |                                     |                                    |                                   |                                     |
| Reelfoot Zone .....            | Nov. 16–Nov. 17 & Nov. 30–Jan. 26.  | Closed .....                       | Oct. 26–Dec. 9 .....              | Nov. 14–Feb. 28.                    |
| State Zone .....               | Nov. 28–Jan. 26 .....               | Closed .....                       | Oct. 26–Dec. 9 .....              | Nov. 14–Feb. 28.                    |
| <i>Wisconsin</i>               |                                     |                                    |                                   |                                     |
| North Zone .....               | Sept. 21–Nov. 19 .....              | Closed .....                       | Sept. 21–Nov. 4 .....             | Sept. 21–Nov. 19.                   |
| South Zone .....               | Sept. 28–Oct. 6 & Oct. 12–Dec. 1.   | Closed .....                       | Sept. 21–Nov. 4 .....             | Sept. 28–Oct. 6 & Oct. 12–Dec. 1.   |
| Miss. River Zone .....         | Sept. 21–Sept. 29 & Oct. 12–Dec. 1. | Closed .....                       | Sept. 21–Nov. 4 .....             | Sept. 21–Sept. 29 & Oct. 12–Dec. 1. |
| <b>PACIFIC FLYWAY</b>          |                                     |                                    |                                   |                                     |
| <i>Arizona</i> (19)            |                                     |                                    |                                   |                                     |
| North Zone .....               | Closed .....                        | Closed .....                       | Closed .....                      | Oct. 4–Jan. 12.                     |
| South Zone .....               | Closed .....                        | Closed .....                       | Closed .....                      | Oct. 18–Jan. 26.                    |
| <i>California</i>              |                                     |                                    |                                   |                                     |
|                                | Closed .....                        | Closed .....                       | Closed .....                      | Oct. 19–Feb. 2.                     |
| <i>Idaho</i>                   |                                     |                                    |                                   |                                     |

|                       | Sora and Virginia rails | Clapper & King rails | Woodcock     | Common snipe                          |
|-----------------------|-------------------------|----------------------|--------------|---------------------------------------|
| Zone 1 .....          | Closed .....            | Closed .....         | Closed ..... | Oct. 5–Jan. 17.                       |
| Zone 2 .....          | Closed .....            | Closed .....         | Closed ..... | Oct. 12–Jan. 24.                      |
| Zone 3 .....          | Closed .....            | Closed .....         | Closed ..... | Oct. 12–Jan. 24.                      |
| *                     | *                       | *                    | *            | *                                     |
| <i>Nevada</i>         |                         |                      |              |                                       |
| Northeast Zone .....  | Closed .....            | Closed .....         | Closed ..... | Sept. 21–Oct. 30 &<br>Nov. 2–Jan. 5.  |
| Northwest Zone .....  | Closed .....            | Closed .....         | Closed ..... | Oct. 12–Oct. 30 & Nov.<br>2–Jan. 26.  |
| South Zone (20) ..... | Closed .....            | Closed .....         | Closed ..... | Oct. 12–Oct. 30 & Nov.<br>2–Jan. 26.  |
| *                     | *                       | *                    | *            | *                                     |
| <i>Oregon</i>         |                         |                      |              |                                       |
| Zone 1 .....          | Closed .....            | Closed .....         | Closed ..... | Nov. 2–Feb. 16.                       |
| Zone 2 .....          | Closed .....            | Closed .....         | Closed ..... | Oct. 5–Dec. 1 & Dec.<br>4–Jan. 19.    |
| *                     | *                       | *                    | *            | *                                     |
| <i>Washington</i>     |                         |                      |              |                                       |
| East Zone .....       | Closed .....            | Closed .....         | Closed ..... | Oct. 12–Oct. 16 & Oct.<br>19–Jan. 26. |
| West Zone .....       | Closed .....            | Closed .....         | Closed ..... | Oct. 12–Oct. 16 & Oct.<br>19–Jan. 26. |

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.

(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In *Connecticut, Delaware, Maryland, and New Jersey*, the limits for clapper and king rails are 10 daily and 30 in possession.

(6) In *Massachusetts*, the sora rail limits are 5 daily and 15 in possession; the Virginia rail limits are 10 daily and 30 in possession.

(19) In *Arizona*, Ashurst Lake in Unit 5B is closed to common snipe hunting.

(20) In *Nevada*, the snipe season for the Clarke County portion of the South Zone is only open November 2 to January 26.

■ 3. Section 20.105 is amended as follows:

■ a. By revising the introductory paragraphs;

■ b. In paragraph (a), by adding entries for the following States in alphabetical order to the table, and by adding footnote (3) following the table;

■ c. In paragraph (b), by revising the introductory text, by adding entries for the following States in alphabetical order to the table, by revising the note following the table, and by adding footnote (4) following the table;

■ d. By revising paragraph (e); and

■ e. In paragraph (f), by revising the introductory text, by adding entries for the following States in alphabetical order to the table, by revising footnotes (1) and (4) following the table, and by

adding footnotes (8), (9), (10), and (11) following the table.

The revisions and additions read as follows:

**§ 20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations.

Area descriptions were published in the August 22, 2013 (78 FR 52338) and

August 23, 2013 (78 FR 52658), **Federal Registers**.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

(a) *Common Moorhens and Purple Gallinules (Atlantic, Mississippi, and Central Flyways)*

**Note:** The following seasons are in addition to the seasons published previously in the August 28, 2013, **Federal Register** (78 FR 53200). The zones named in this paragraph are the same as those used for setting duck seasons.

|                 |   | Season dates           | Limits |            |
|-----------------|---|------------------------|--------|------------|
|                 |   |                        | Bag    | Possession |
| ATLANTIC FLYWAY |   |                        |        |            |
| *               | * | *                      | *      | *          |
| Georgia         |   | Nov. 23–Dec. 1 & ..... | 15     | 45         |
|                 |   | Dec. 7–Jan. 26 .....   | 15     | 45         |
| *               | * | *                      | *      | *          |
| West Virginia   |   | Oct. 1–Oct. 12 & ..... | 15     | 30         |

|                              |  |  | Season dates   | Limits |            |
|------------------------------|--|--|--|--------|------------|
|                              |  |  |  | Bag    | Possession |
| <b>MISSISSIPPI FLYWAY</b>    |  |  | Dec. 16–Jan. 25 .....  | 15     | 30         |
| * * *                        |  |  | * * *  |        |            |
| <i>Louisiana</i>             |  |  | Sept. 14–Sept. 29 & .....  | 15     | 45         |
|                              |  |  | Nov. 9–Jan. 1 .....  | 15     | 45         |
| <i>Minnesota</i> (3)         |  |  |  |        |            |
| North Zone .....             |  |  | Sept. 21–Nov. 19 .....   | 15     | 45         |
| Central Zone .....           |  |  | Sept. 21–Sept. 29 & .....  | 15     | 45         |
|                              |  |  | Oct. 5–Nov. 24 .....   | 15     | 45         |
| South Zone .....             |  |  | Sept. 21–Sept. 29 & .....  | 15     | 45         |
|                              |  |  | Oct. 12–Dec. 1 .....   | 15     | 45         |
| * * *                        |  |  | * * *  |        |            |
| <i>Tennessee</i>             |  |  |  |        |            |
| Reelfoot Zone .....          |  |  | Nov. 16–Nov. 17 & .....  | 15     | 45         |
|                              |  |  | Nov. 30–Jan. 26 .....  | 15     | 45         |
| State Zone .....             |  |  | Nov. 28–Jan. 26 .....  | 15     | 45         |
| <i>Wisconsin</i>             |  |  |  |        |            |
| North Zone .....             |  |  | Sept. 21–Nov. 19 .....   | 15     | 45         |
| South Zone .....             |  |  | Sept. 28–Oct. 6 & .....  | 15     | 45         |
|                              |  |  | Oct. 12–Dec. 1 .....   | 15     | 45         |
| Mississippi River Zone ..... |  |  | Sept. 21–Sept. 29 & .....  | 15     | 45         |
|                              |  |  | Oct. 12–Dec. 1 .....   | 15     | 45         |
| * * *                        |  |  | * * *  |        |            |
| <b>PACIFIC FLYWAY</b>        |  |  |  |        |            |
| All States                   |  |  | Seasons are in aggregate with coots and listed in paragraph (e). |        |            |
| * * *                        |  |  | * * *  |        |            |

(3) In *Minnesota*, the daily bag limit is 15 and the possession limit is 45 coots and moorhens in the aggregate.

*(b) Sea Ducks (scoter, eider, and long-tailed ducks in Atlantic Flyway)*

August 28, 2013, **Federal Register** (78 FR 53200).

**Note:** The following seasons are in addition to the seasons published previously in the

Within the special sea duck areas, the daily bag limit is 7 scoter, eider, and long-tailed ducks of which no more than

4 may be scoters. Possession limits are three times the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

|                          |  |  | Season dates           | Limits |            |
|--------------------------|--|--|------------------------|--------|------------|
|                          |  |  |                        | Bag    | Possession |
| * * *                    |  |  | * * *                  |        |            |
| <i>Georgia</i>           |  |  | Nov. 23–Dec. 1 & ..... | 7      | 21         |
|                          |  |  | Dec. 7–Jan. 26 .....   | 7      | 21         |
| * * *                    |  |  | * * *                  |        |            |
| <i>Maryland</i>          |  |  | Oct. 1–Jan. 31 .....   | 5      | 15         |
| * * *                    |  |  | * * *                  |        |            |
| <i>Massachusetts</i> (4) |  |  | Oct. 7–Jan. 31 .....   | 7      | 21         |
| * * *                    |  |  | * * *                  |        |            |
| <i>North Carolina</i>    |  |  | Oct. 2–Jan. 31 .....   | 7      | 21         |
| * * *                    |  |  | * * *                  |        |            |
| <i>South Carolina</i>    |  |  | Oct. 12–Jan. 26 .....  | 7      | 21         |
| <i>Virginia</i>          |  |  | Oct. 10–Jan. 31 .....  | 7      | 21         |
| * * *                    |  |  | * * *                  |        |            |

**Note:** Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in *Connecticut, Delaware, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Rhode Island, South Carolina, and Virginia* in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(4) In *Massachusetts*, the daily bag limit may include no more than 4 eiders (only 1 of which may be a hen) and 4 long-tailed ducks.

\* \* \* \* \*

(e) *Waterfowl, Coots, and Pacific-Flyway Seasons for Common Moorhens and Purple Gallinules.*

### Definitions

*The Atlantic Flyway:* Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

*The Mississippi Flyway:* Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

*The Central Flyway:* Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except

that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

*The Pacific Flyway:* Includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

*Light Geese:* Includes lesser snow (including blue) geese, greater snow geese, and Ross's geese.

*Dark Geese:* Includes Canada geese, white-fronted geese, emperor geese, brant (except in California, Oregon, Washington, and the Atlantic Flyway), and all other geese except light geese.

### Atlantic Flyway

#### Flyway-Wide Restrictions

**Duck Limits:** The daily bag limit of 6 ducks may include no more than 4 mallards (2 hen mallards), 2 scaup, 1 black duck, 2 pintails, 2 canvasbacks, 1 mottled duck, 3 wood ducks, 2 redheads, and 1 fulvous tree duck. The possession limit is three times the daily bag limit.

**Harlequin Ducks:** All areas of the Flyway are closed to harlequin duck hunting.

**Merganser Limits:** The daily bag limit is 5 mergansers with 15 in possession and may include no more than 2 hooded mergansers daily and 6 in possession. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 2 daily and 6 in possession may be hooded mergansers.

|                       | Season dates  | Limits |            |
|-----------------------|---|--------|------------|
|                       |   | Bag    | Possession |
| <i>Connecticut</i>    |   |        |            |
| Ducks and Mergansers: |   | 6      | 18         |
| North Zone            | Oct. 9–Oct. 19 & Nov. 11–Jan. 7                     |        |            |
| South Zone            | Oct. 9–Oct. 12 & Nov. 16–Jan. 20                    |        |            |
| Coots                 | Same as for Ducks                                   | 15     | 45         |
| Canada Geese:         |   |        |            |
| AFRP Unit             | Oct. 15–Oct. 19 & Nov. 20–Nov. 30 & Dec. 3–Feb. 15  | 5      | 15         |
|                       | Oct. 9–Oct. 19 & Nov. 19–Jan. 15                    | 5      | 15         |
| NAP H-Unit            | Oct. 9–Oct. 19 & Nov. 19–Jan. 15                    | 2      | 6          |
|                       | Oct. 15–Oct. 19 & Nov. 16–Jan. 7                    | 2      | 6          |
| AP Unit               | Oct. 15–Oct. 19 & Nov. 16–Jan. 7                    | 3      | 9          |
|                       | Jan. 16–Feb. 15                                     | 3      | 9          |
| Special Season        | Jan. 16–Feb. 15                                     | 5      | 15         |
| Light Geese:          |   |        |            |
| North Zone            | Oct. 1–Jan. 15 & Feb. 21–Mar. 10                    | 25     |            |
|                       | Oct. 1–Nov. 30 & Jan. 7–Mar. 10                     | 25     |            |
| South Zone            | Oct. 1–Nov. 30 & Jan. 7–Mar. 10                     | 25     |            |
|                       | Jan. 7–Mar. 10                                      | 25     |            |
| Brant:                |   |        |            |
| North Zone            | Dec. 4–Jan. 7                                       | 2      | 6          |
| South Zone            | Dec. 17–Jan. 20                                     | 2      | 6          |
| <i>Delaware</i>       |   |        |            |
| Ducks                 | Oct. 25–Nov. 11 & Nov. 25–Nov. 30 & Dec. 12–Jan. 25 | 6      | 18         |
|                       | Nov. 25–Nov. 30 & Dec. 12–Jan. 25                   | 6      | 18         |
|                       | Dec. 12–Jan. 25                                     | 6      | 18         |
| Mergansers            | Same as for Ducks                                   | 5      | 15         |
| Coots                 | Same as for Ducks                                   | 15     | 45         |
| Canada Geese          | Nov. 25–Nov. 30 & Dec. 12–Jan. 31                   | 2      | 6          |
|                       | Dec. 12–Jan. 31                                     | 2      | 6          |
| Light Geese (1)       | Oct. 1–Jan. 31                                      | 25     |            |
|                       | Feb. 8  | 25     |            |
| Brant                 | Dec. 23–Jan. 25                                     | 2      | 6          |
| <i>Florida</i>        |   |        |            |
| Ducks                 | Nov. 23–Dec. 1 & Dec. 7–Jan. 26                     | 6      | 18         |
|                       | Dec. 7–Jan. 26                                      | 6      | 18         |
| Mergansers            | Same as for Ducks                                   | 5      | 15         |
| Coots                 | Same as for Ducks                                   | 15     | 45         |
| Canada Geese          | Nov. 23–Dec. 1 & Dec. 1–Jan. 30                     | 5      | 15         |
|                       | Dec. 1–Jan. 30                                      | 5      | 15         |
| Light Geese           | Same as for Ducks                                   | 15     |            |
| <i>Georgia</i>        |   |        |            |
| Ducks                 | Nov. 23–Dec. 1 &                                    | 6      | 18         |

|                          | Season dates        | Limits |            |
|--------------------------|---------------------|--------|------------|
|                          |                     | Bag    | Possession |
| Mergansers               | Dec. 7–Jan. 26      | 6      | 18         |
| Coots                    | Same as for Ducks   | 5      | 15         |
| Canada Geese             | Same as for Ducks   | 15     | 45         |
|                          | Oct. 12–Oct. 27 &   | 5      | 15         |
|                          | Nov. 23–Dec. 1 &    | 5      | 15         |
|                          | Dec. 7–Jan. 26      | 5      | 15         |
| Light Geese              | Same as for Canada  |        |            |
| Brant                    | Geese               | 5      | 15         |
|                          | Closed              |        |            |
| <i>Maine</i>             |                     |        |            |
| Ducks (2):               |                     | 6      | 18         |
| North Zone               | Sept. 23–Nov. 30    |        |            |
| South Zone               | Oct. 1–Oct. 19 &    |        |            |
|                          | Nov. 4–Dec. 23      |        |            |
| Coastal Zone             | Oct. 1–Oct. 19 &    |        |            |
|                          | Nov. 16–Jan. 4      |        |            |
| Mergansers               | Same as for Ducks   | 5      | 15         |
| Coots                    | Same as for Ducks   | 5      | 15         |
| Canada Geese:            |                     |        |            |
| North Zone               | Oct. 1–Dec. 8       | 2      | 6          |
| South Zone               | Same as for Ducks   | 2      | 6          |
| Coastal Zone             | Same as for Ducks   | 2      | 6          |
| Light Geese              | Oct. 1–Jan. 31      | 25     |            |
| Brant:                   |                     |        |            |
| North Zone               | Oct. 1–Nov. 4       | 2      | 6          |
| South Zone               | Oct. 1–Oct. 19 &    | 2      | 6          |
|                          | Nov. 4–Nov. 18      | 2      | 6          |
| Coastal Zone             | Oct. 1–Oct. 19 &    | 2      | 6          |
|                          | Nov. 16–Nov. 30     | 2      | 6          |
| <i>Maryland</i>          |                     |        |            |
| Ducks and Mergansers (3) | Oct. 12–Oct. 19 &   | 6      | 18         |
|                          | Nov. 9–Nov. 29 &    | 6      | 18         |
|                          | Dec. 17–Jan. 25     | 6      | 18         |
| Coots                    | Same as for Ducks   | 15     | 45         |
| Canada Geese:            |                     |        |            |
| RP Zone                  | Nov. 16–Nov. 29 &   | 5      | 15         |
|                          | Dec. 17–Mar. 5      | 5      | 15         |
| AP Zone                  | Nov. 16–Nov. 29 &   | 2      | 6          |
|                          | Dec. 17–Jan. 29     | 2      | 6          |
| Light Geese              | Oct. 5–Nov. 29 &    | 25     |            |
|                          | Dec. 16–Jan. 29 &   | 25     |            |
|                          | Feb. 8 only         | 25     |            |
| Brant                    | Dec. 23–Jan. 25     | 2      | 6          |
| <i>Massachusetts</i>     |                     |        |            |
| Ducks (4):               |                     | 6      | 18         |
| Western Zone             | Oct. 14–Nov. 30 &   |        |            |
|                          | Dec. 9–Dec. 28      |        |            |
| Central Zone             | Oct. 15–Nov. 30 &   |        |            |
|                          | Dec. 21–Jan. 11     |        |            |
| Coastal Zone             | Oct. 16–Oct. 26 &   |        |            |
|                          | Nov. 15–Jan. 11     |        |            |
| Mergansers               | Same as for Ducks   | 5      | 15         |
| Coots                    | Same as for Ducks   | 15     | 45         |
| Canada Geese:            |                     |        |            |
| NAP Zone:                |                     |        |            |
| Central Zone             | Oct. 15–Nov. 30 &   | 2      | 6          |
|                          | Dec. 21–Jan. 11     | 2      | 6          |
| (Special season)         | Jan. 18–Feb. 15     | 5      | 15         |
| Coastal Zone             | Oct. 16–Oct. 26 &   | 2      | 6          |
|                          | Nov. 15–Jan. 11     | 2      | 6          |
| (Special season) (5)     | Jan. 18–Feb. 15     | 5      | 15         |
| AP Zone                  | Oct. 14–Nov. 30 &   | 3      | 9          |
|                          | Dec. 9–Dec. 17      | 3      | 9          |
| Light Geese:             |                     |        |            |
| Western Zone             | Same as for Ducks   | 15     | 45         |
| Central Zone             | Same as for Ducks & | 15     | 45         |
|                          | Jan. 18–Feb. 15     | 15     | 45         |
| Coastal Zone (5)         | Same as for Ducks & | 15     | 45         |
|                          | Jan. 18–Feb. 15     | 15     | 45         |
| Brant:                   |                     |        |            |
| Western & Central Zone   | Closed              |        |            |
| Coastal Zone             | Nov. 15–Nov. 30 &   | 2      | 6          |

|                                   |  | Season dates            | Limits |            |
|-----------------------------------|--|-------------------------|--------|------------|
|                                   |  |                         | Bag    | Possession |
| <i>New Hampshire</i>              |  | Dec. 18–Jan. 4 .....    | 2      | 6          |
| Ducks:                            |  |                         | 6      | 18         |
| Northern Zone .....               |  | Oct. 2–Nov. 30 .....    |        |            |
| Inland Zone .....                 |  | Oct. 2–Nov. 3 & .....   |        |            |
|                                   |  | Nov. 19–Dec. 15 .....   |        |            |
| Coastal Zone .....                |  | Oct. 3–Oct. 14 & .....  |        |            |
|                                   |  | Nov. 19–Jan. 5 .....    |        |            |
| Mergansers .....                  |  | Same as for Ducks ..... | 5      | 15         |
| Coots .....                       |  | Same as for Ducks ..... | 15     | 45         |
| Canada Geese:                     |  |                         |        |            |
| Northern Zone .....               |  | Same as for Ducks ..... | 2      | 6          |
| Inland Zone .....                 |  | Same as for Ducks ..... | 2      | 6          |
| Coastal Zone .....                |  | Same as for Ducks ..... | 2      | 6          |
| Light Geese:                      |  |                         |        |            |
| Northern Zone .....               |  | Oct. 2–Dec. 15 .....    | 25     |            |
| Inland Zone .....                 |  | Oct. 2–Dec. 15 .....    | 25     |            |
| Coastal Zone .....                |  | Oct. 3–Jan. 5 .....     | 25     |            |
| Brant:                            |  |                         |        |            |
| Northern Zone .....               |  | Oct. 2–Oct. 31 .....    | 2      | 6          |
| Inland Zone .....                 |  | Oct. 2–Oct. 31 .....    | 2      | 6          |
| Coastal Zone .....                |  | Oct. 3–Nov. 1 .....     | 2      | 6          |
| <i>New Jersey</i>                 |  |                         |        |            |
| Ducks:                            |  |                         | 6      | 18         |
| North Zone .....                  |  | Oct. 12–Oct. 24 & ..... |        |            |
|                                   |  | Nov. 16–Jan. 11 .....   |        |            |
| South Zone .....                  |  | Oct. 19–Oct. 26 & ..... |        |            |
|                                   |  | Nov. 16–Jan. 16 .....   |        |            |
| Coastal Zone .....                |  | Nov. 2–Nov. 12 & .....  |        |            |
|                                   |  | Nov. 28–Jan. 25 .....   |        |            |
| Mergansers .....                  |  | Same as for Ducks ..... | 5      | 15         |
| Coots .....                       |  | Same as for Ducks ..... | 15     | 45         |
| Canada and White-fronted Geese:   |  |                         |        |            |
| North Zone .....                  |  | Nov. 16–Nov. 30 & ..... | 3      | 9          |
|                                   |  | Dec. 14–Jan. 25 & ..... | 3      | 9          |
| South Zone .....                  |  | Nov. 16–Nov. 30 & ..... | 3      | 9          |
|                                   |  | Dec. 14–Jan. 25 & ..... | 3      | 9          |
| Coastal Zone .....                |  | Nov. 28–Dec. 7 & .....  | 3      | 9          |
|                                   |  | Dec. 10–Jan. 25 .....   | 3      | 9          |
| Special season .....              |  | Jan. 27–Feb. 15 .....   | 5      | 15         |
| Light Geese:                      |  |                         |        |            |
| North Zone .....                  |  | Oct. 17–Feb. 15 .....   | 25     |            |
| South Zone .....                  |  | Oct. 17–Feb. 15 .....   | 25     |            |
| Coastal Zone .....                |  | Oct. 17–Feb. 15 .....   | 25     |            |
| Brant:                            |  |                         |        |            |
| North Zone .....                  |  | Nov. 16–Nov. 30 & ..... | 2      | 6          |
|                                   |  | Dec. 24–Jan. 11 .....   | 2      | 6          |
| South Zone .....                  |  | Oct. 19–Oct. 26 & ..... | 2      | 6          |
|                                   |  | Nov. 16–Dec. 12 .....   | 2      | 6          |
| Coastal Zone .....                |  | Nov. 2–Nov. 12 & .....  | 2      | 6          |
|                                   |  | Dec. 21–Jan. 14 .....   | 2      | 6          |
| <i>New York</i>                   |  |                         |        |            |
| Ducks and Mergansers:             |  |                         | 6      | 18         |
| Long Island Zone .....            |  | Nov. 28–Jan. 26 .....   |        |            |
| Lake Champlain Zone .....         |  | Oct. 9–Oct. 13 & .....  |        |            |
|                                   |  | Oct. 26–Dec. 19 .....   |        |            |
| Northeastern Zone .....           |  | Oct. 5–Oct. 13 & .....  |        |            |
|                                   |  | Oct. 26–Dec. 15 .....   |        |            |
| Southeastern Zone .....           |  | Oct. 12–Oct. 20 & ..... |        |            |
|                                   |  | Nov. 17–Jan. 6 .....    |        |            |
| Western Zone .....                |  | Oct. 26–Dec. 8 & .....  |        |            |
|                                   |  | Dec. 28–Jan. 12 .....   |        |            |
| Coots .....                       |  | Same as for Ducks ..... | 15     | 45         |
| Canada Geese:                     |  |                         |        |            |
| Western Long Island (AFRP) .....  |  | Oct. 5–Oct. 20 & .....  |        |            |
|                                   |  | Nov. 28–Feb. 26 .....   | 8      | 24         |
| Central Long Island (NAP–L) ..... |  | Nov. 28–Feb. 5 & .....  | 3      | 9          |
| Eastern Long Island (NAP–H) ..... |  | Dec. 3–Jan. 31 .....    | 2      | 6          |
| Lake Champlain (AP) Zone .....    |  | Oct. 10–Nov. 28 .....   | 3      | 9          |
| Northeast (AP) Zone .....         |  | Oct. 26–Nov. 17 & ..... | 3      | 9          |
|                                   |  | Nov. 19–Dec. 15 .....   | 3      | 9          |
| East Central (AP) Zone .....      |  | Oct. 26–Nov. 15 & ..... | 3      | 9          |

|                               | Season dates            | Limits |            |
|-------------------------------|-------------------------|--------|------------|
|                               |                         | Bag    | Possession |
| Hudson Valley (AP) Zone ..... | Nov. 23–Dec. 21 .....   | 3      | 9          |
|                               | Oct. 26–Nov. 15 & ..... | 3      | 9          |
|                               | Dec. 7–Jan. 4 .....     | 3      | 9          |
| West Central (AP) Zone .....  | Oct. 26–Nov. 24 & ..... | 3      | 9          |
|                               | Dec. 28–Jan. 16 .....   | 3      | 9          |
| South (AFRP) .....            | Oct. 26–Dec. 18 & ..... | 5      | 15         |
|                               | Dec. 28–Jan. 12 & ..... | 5      | 15         |
|                               | Mar. 1–Mar. 10 .....    | 5      | 15         |
| Special season .....          | Feb. 6–Feb. 12 .....    | 5      | 15         |
| Light Geese (6):              |                         |        |            |
| Long Island Zone .....        | Nov. 24–Mar. 10 .....   | 25     | .....      |
| Lake Champlain Zone .....     | Oct. 1–Dec. 29 .....    | 25     | .....      |
| Northeastern Zone .....       | Oct. 1–Jan. 15 .....    | 25     | .....      |
| Southeastern Zone .....       | Oct. 1–Jan. 15 .....    | 25     | .....      |
| Western Zone .....            | Oct. 1–Jan. 15 .....    | 25     | .....      |
| Brant:                        |                         |        |            |
| Long Island Zone .....        | Dec. 28–Jan. 26 .....   | 2      | 6          |
| Lake Champlain Zone .....     | Oct. 9–Nov. 7 .....     | 2      | 6          |
| Northeastern Zone .....       | Oct. 5–Nov. 3 .....     | 2      | 6          |
| Southeastern Zone .....       | Oct. 26–Nov. 24 .....   | 2      | 6          |
| Western Zone .....            | Oct. 12–Nov. 10 .....   | 2      | 6          |
| North Carolina                |                         |        |            |
| Ducks (7) .....               | Oct. 2–Oct. 5 & .....   | 6      | 18         |
|                               | Nov. 9–Nov. 30 & .....  | 6      | 18         |
|                               | Dec. 14–Jan. 25 .....   | 6      | 18         |
| Mergansers .....              | Same as for Ducks ..... | 5      | 15         |
| Coots .....                   | Same as for Ducks ..... | 15     | 45         |
| Canada Geese:                 |                         |        |            |
| RP Hunt Zone .....            | Oct. 2–Oct. 12 & .....  | 5      | 15         |
|                               | Nov. 9–Nov. 30 & .....  | 5      | 15         |
|                               | Dec. 14–Feb. 8 .....    | 5      | 15         |
| SJBP Hunt Zone .....          | Oct. 2–Oct. 30 & .....  | 5      | 15         |
|                               | Nov. 9–Dec. 31 .....    | 5      | 15         |
| Northeast Hunt Zone (8) ..... | Jan. 10–Jan. 25 .....   | 1      | 3          |
| Light Geese (9) .....         | Oct. 16–Oct. 19 & ..... | 25     | .....      |
|                               | Nov. 9–Mar. 8 .....     | 25     | .....      |
| Brant .....                   | Dec. 23–Jan. 25 .....   | 2      | 6          |
| Pennsylvania                  |                         |        |            |
| Ducks: .....                  | .....                   | 6      | 18         |
| North Zone .....              | Oct. 12–Nov. 30 & ..... | .....  | .....      |
|                               | Dec. 24–Jan. 11 .....   | .....  | .....      |
| South Zone .....              | Oct. 19–Oct. 26 & ..... | .....  | .....      |
|                               | Nov. 15–Jan. 15 .....   | .....  | .....      |
| Northwest Zone .....          | Oct. 12–Dec. 14 .....   | .....  | .....      |
|                               | Dec. 27–Jan. 1 .....    | .....  | .....      |
| Lake Erie Zone .....          | Oct. 28–Jan. 4 .....    | .....  | .....      |
| Mergansers .....              | Same as for Ducks ..... | 5      | 15         |
| Coots .....                   | Same as for Ducks ..... | 15     | 45         |
| Canada Geese:                 |                         |        |            |
| Eastern (AP) Zone .....       | Nov. 15–Nov. 30 & ..... | 3      | 9          |
|                               | Dec. 16–Jan. 25 .....   | 3      | 9          |
| SJBP Zone .....               | Oct. 12–Nov. 30 & ..... | 3      | 9          |
|                               | Dec. 16–Jan. 24 .....   | 3      | 9          |
| Resident (RP) Zone .....      | Oct. 26–Nov. 30 & ..... | 5      | 15         |
|                               | Dec. 18–Jan. 15 & ..... | 5      | 15         |
|                               | Feb. 1–Feb. 28 .....    | 5      | 15         |
| Light Geese:                  |                         |        |            |
| Eastern (AP) Zone .....       | Oct. 1–Jan. 25 .....    | 25     | .....      |
| SJBP Zone .....               | Oct. 1–Jan. 24 .....    | 25     | .....      |
| Resident (RP) Zone .....      | Oct. 28–Feb. 28 .....   | 25     | .....      |
| Brant .....                   | Oct. 12–Nov. 15 .....   | 2      | 6          |
| Rhode Island                  |                         |        |            |
| Ducks .....                   | Oct. 11–Oct. 14 & ..... | 6      | 12         |
|                               | Nov. 25–Jan. 19 .....   | 6      | 12         |
| Mergansers .....              | Same as for Ducks ..... | 5      | 10         |
| Coots .....                   | Same as for Ducks ..... | 15     | 30         |
| Canada Geese .....            | Nov. 21–Jan. 19 .....   | 2      | 4          |
| Special season .....          | Jan. 24–Feb. 9 .....    | 5      | 10         |
| Light Geese .....             | Oct. 5–Jan. 19 .....    | 15     | .....      |
| Brant .....                   | Dec. 21–Jan. 19 .....   | 2      | 4          |
| South Carolina                |                         |        |            |
| Ducks (10) .....              | Nov. 23–Dec. 1 & .....  | 6      | 18         |

|   | Season dates                   | Limits |            |
|---|--------------------------------|--------|------------|
|   |                                | Bag    | Possession |
| Mergansers (11) .....                     | Dec. 7–Jan. 26 .....           | 6      | 18         |
| Coots .....                               | Same as for Ducks .....        | 5      | 15         |
| Canada and White-fronted Geese (12) ..... | Same as for Ducks .....        | 15     | 45         |
| Light Geese .....                         | Same as for Ducks & .....      | 5      | 15         |
| Brant .....                               | Feb. 6–Feb. 15 .....           | 5      | 15         |
| Vermont                                   | Same as for Ducks .....        | 25     | .....      |
| Ducks: .....                              | Dec. 28–Jan. 26 .....          | 2      | 6          |
| Lake Champlain Zone .....                 | .....                          | 6      | 18         |
| Interior Zone .....                       | Oct. 9–Oct. 13 & .....         | .....  | .....      |
| Connecticut River Zone .....              | Oct. 26–Dec. 19 .....          | .....  | .....      |
| Mergansers .....                          | Oct. 9–Dec. 7 .....            | .....  | .....      |
| Coots .....                               | Oct. 2–Nov. 3 & .....          | .....  | .....      |
| Canada Geese:                             | Nov. 19–Dec. 15 .....          | .....  | .....      |
| Lake Champlain Zone .....                 | Same as for Ducks .....        | 5      | 15         |
| Interior Zone .....                       | Same as for Ducks .....        | 15     | 45         |
| Connecticut River Zone .....              | .....                          | .....  | .....      |
| Light Geese:                              | Oct. 10–Nov. 28 .....          | 3      | 9          |
| Lake Champlain Zone .....                 | Oct. 10–Nov. 28 .....          | 3      | 9          |
| Interior Zone .....                       | Oct. 2–Nov. 3 & .....          | 2      | 6          |
| Connecticut River Zone .....              | Nov. 19–Dec. 15 .....          | 2      | 6          |
| Brant:                                    | .....                          | .....  | .....      |
| Lake Champlain Zone .....                 | Oct. 1–Dec. 29 .....           | 25     | .....      |
| Interior Zone .....                       | Oct. 1–Dec. 29 .....           | 25     | .....      |
| Connecticut River Zone .....              | Oct. 2–Dec. 15 .....           | 25     | .....      |
| Virginia                                  | .....                          | .....  | .....      |
| Ducks (13) .....                          | Oct. 9–Nov. 7 .....            | 2      | 6          |
| Mergansers .....                          | Oct. 9–Nov. 7 .....            | 2      | 6          |
| Coots .....                               | Oct. 2–Oct. 31 .....           | 2      | 6          |
| Canada Geese:                             | .....                          | .....  | .....      |
| Eastern (AP) Zone .....                   | Oct. 10–Oct. 14 & .....        | 6      | 18         |
| Western (SJB) Zone .....                  | Nov. 16–Nov. 30 & .....        | 6      | 18         |
| (Special season) .....                    | Dec. 7–Jan. 25 .....           | 6      | 18         |
| Western (RP) Zone .....                   | Same as for Ducks .....        | 5      | 15         |
| Light Geese .....                         | Same as for Ducks .....        | 15     | 45         |
| Brant .....                               | .....                          | .....  | .....      |
| West Virginia                             | .....                          | .....  | .....      |
| Ducks (14) .....                          | Nov. 16–Nov. 30 & .....        | 2      | 6          |
| Mergansers .....                          | Dec. 18–Jan. 29 .....          | 2      | 6          |
| Coots .....                               | Nov. 16–Nov. 30 & .....        | 3      | 9          |
| Canada Geese .....                        | Dec. 14–Jan. 14 & .....        | 3      | 9          |
| Light Geese .....                         | Jan. 15–Feb. 15 .....          | 5      | 15         |
| Brant .....                               | Nov. 16–Nov. 30 & .....        | 5      | 15         |
| West Virginia                             | Dec. 7–Feb. 22 .....           | 5      | 15         |
| Ducks (14) .....                          | Oct. 10–Jan. 31 .....          | 25     | .....      |
| Mergansers .....                          | Dec. 23–Jan. 25 .....          | 2      | 6          |
| Coots .....                               | .....                          | .....  | .....      |
| Canada Geese .....                        | Oct. 1–Oct. 12 & .....         | 6      | 18         |
| Light Geese .....                         | Nov. 11–Nov. 16 & .....        | 6      | 18         |
| Brant .....                               | Dec. 16–Jan. 25 .....          | 6      | 18         |
| West Virginia                             | Same as for Ducks .....        | 5      | 15         |
| Ducks (14) .....                          | Same as for Ducks .....        | 15     | 45         |
| Mergansers .....                          | Oct. 1–Oct. 26 & .....         | 5      | 15         |
| Coots .....                               | Nov. 11–Nov. 16 & .....        | 5      | 15         |
| Canada Geese .....                        | Dec. 16–Jan. 31 .....          | 5      | 15         |
| Light Geese .....                         | Same as for Canada Geese ..... | 5      | 15         |
| Brant .....                               | Dec. 27–Jan. 25 .....          | 2      | 6          |

(1) In *Delaware*, the Bombay Hook NWR snow goose season is open Mondays, Wednesdays, and Fridays only.

(2) In *Maine*, the daily bag limit may include no more than 4 of any species, with no more than 12 of any one species in possession. The season for Barrow's goldeneye is closed.

(3) In *Maryland*, the black duck season is closed October 12 through October 19.

(4) In *Massachusetts*, the daily bag limit may include no more than 4 of any single species in addition to the flyway-wide bag restrictions.

(5) In *Massachusetts*, the January 18 to February 15 portion of the season in the Coastal Zone is restricted to that portion of the Coastal Zone north of the Cape Cod Canal.

(6) In *New York*, the use of electronic calls and shotguns capable of holding more than 3 shotshells are allowed for hunting of light geese on any day when all other waterfowl hunting seasons are closed.

(7) In *North Carolina*, the season is closed for black ducks October 2 through October 5 and November 9 through November 22. The daily bag limit for black and mottled ducks is combined with no more than 1 allowed in the daily bag.

(8) In *North Carolina*, a permit is required to hunt Canada geese in the Northeast Hunt Zone.

(9) In *North Carolina*, electronic calls and unplugged shotguns are allowed for light geese from February 11 through March 8.

(10) In *South Carolina*, the daily bag limit of 6 may not exceed 1 black-bellied whistling duck, and 1 black duck or 1 mottled duck in the aggregate.

(11) In *South Carolina*, the daily bag limit for mergansers may include no more than 1 hooded merganser.

(12) In *South Carolina*, the daily bag limit may include no more than 2 white-fronted geese.

(13) In *Virginia*, the season is closed for black ducks October 10 through October 14.

(14) In *West Virginia*, the daily bag limit may include no more than 4 long-tailed ducks, and the season is closed for eiders, whistling ducks, and mottled ducks.

### Mississippi Flyway

#### Flyway-Wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (no more than 2 of which may be females), 1 mottled duck, 1 black

duck, 2 pintails, 2 canvasbacks, 2 redheads, 3 scaup, and 3 wood ducks. The possession limit is three times the daily bag limit.

Merganser Limits: The merganser limits include no more than 2 hooded

mergansers daily and 6 in possession. In states that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 2 daily and 6 in possession may be hooded mergansers.

|                              | Season dates  | Limits      |                |
|------------------------------|---|-------------|----------------|
|                              |   | Bag         | Possession     |
| <b>Alabama</b>               |   |             |                |
| Ducks:                       |   | 6           | 18             |
| North Zone                   | Nov. 28–Jan. 26   |             |                |
| South Zone                   | Same as North Zone  |             |                |
| Mergansers                   | Same as for Ducks   | 5           | 15             |
| Coots                        | Same as for Ducks   | 15          | 45             |
| Dark Geese:                  |   |             |                |
| North Zone:                  |   |             |                |
| SJBP Zone                    | Sept. 21–Oct. 8 &<br>Nov. 28–Jan. 26                      | 3<br>3      | 9<br>9         |
| Rest of North Zone           | Same as SJBP Zone   | 3           | 9              |
| South Zone                   | Same as Rest of North Zone                                | 3           | 9              |
| White-fronted Geese:         |   |             |                |
| North Zone:                  |   |             |                |
| SJBP Zone                    | Same as for Dark Geese                                    | 2           | 6              |
| Rest of North Zone           | Same as SJBP Zone   | 2           | 6              |
| South Zone                   | Same as Rest of North Zone                                | 2           | 6              |
| Light Geese:                 |   |             |                |
| North Zone:                  |   |             |                |
| Monroe and Escambia Counties | Sept. 21–Oct. 8 &<br>Oct. 26–Nov. 10 &<br>Nov. 28–Jan. 26 | 5<br>5<br>5 | 15<br>15<br>15 |
| SJBP Zone                    | Same as Rest of North Zone                                | 5           | 15             |
| Rest of North Zone           | Same as for Dark Geese                                    | 5           | 15             |
| South Zone                   | Same as for Dark Geese                                    | 5           | 15             |
| <b>Arkansas</b>              |   |             |                |
| Ducks                        | Nov. 23–Dec. 1 &<br>Dec. 5–Dec. 23 &<br>Dec. 26–Jan. 26   | 6<br>6<br>6 | 18<br>18<br>18 |
| Mergansers                   | Same as for Ducks   | 5           | 15             |
| Coots                        | Same as for Ducks   | 15          | 45             |
| Canada Geese:                |   |             |                |
| Northwest Zone               | Sept. 21–Sept. 30 &<br>Nov. 14–Jan. 26                    | 2<br>2      | 6<br>6         |
| Remainder of State           | Nov. 14–Jan. 26   | 2           | 6              |
| White-fronted Geese          | Nov. 14–Jan. 26   | 2           | 6              |
| Brant                        | Closed  |             |                |
| Light Geese                  | Nov. 14–Jan. 26   | 20          |                |
| <b>Illinois</b>              |   |             |                |
| Ducks:                       |   | 6           | 18             |
| North Zone                   | Oct. 19–Dec. 17   |             |                |
| Central Zone                 | Oct. 26–Dec. 24   |             |                |
| South Central Zone           | Nov. 9–Jan. 7   |             |                |
| South Zone                   | Nov. 28–Jan. 26   |             |                |
| Mergansers                   | Same as for Ducks   | 5           | 15             |
| Coots                        | Same as for Ducks   | 15          | 45             |
| Canada Geese:                |   |             |                |
| North Zone                   | Oct. 19–Jan. 16   | 2           | 6              |
| Central Zone                 | Oct. 26–Nov. 17 &<br>Nov. 26–Jan. 31                      | 2<br>2      | 6<br>6         |
| South Central Zone           | Nov. 9–Jan. 31  | 2           | 6              |
| South Zone                   | Nov. 28–Jan. 31   | 2           | 6              |
| White-fronted Geese:         |   |             |                |
| North Zone                   | Nov. 4–Jan. 16  | 2           | 6              |
| Central Zone                 | Nov. 19–Jan. 31   | 2           | 6              |
| South Central Zone           | Nov. 19–Jan. 31   | 2           | 6              |
| South Zone                   | Nov. 28–Jan. 31   | 2           | 6              |
| Light Geese:                 |   |             |                |
| North Zone                   | Oct. 19–Jan. 16   | 20          |                |

|                           | Season dates   | Limits   |            |
|---------------------------|--|----------|------------|
|                           |  | Bag      | Possession |
| Central Zone .....        | Oct. 26-Jan. 31 .....  | 20 ..... | .....      |
| South Central Zone .....  | Nov. 9-Jan. 31 .....   | 20 ..... | .....      |
| South Zone .....          | Nov. 28-Jan. 31 .....  | 20 ..... | .....      |
| Brant .....               | Same as for Light Geese .....                                  | 1 .....  | 3 .....    |
| <i>Indiana</i>            |  |          |            |
| Ducks: .....              | .....  | 6 .....  | 18 .....   |
| North Zone .....          | Oct. 19-Dec. 8 &<br>Dec. 21-Dec. 29 .....                      | .....    | .....      |
| Central Zone .....        | Oct. 26-Dec. 8 &<br>Dec. 21-Jan. 5 .....                       | .....    | .....      |
| South Zone .....          | Nov. 2-Nov. 10 &<br>Nov. 30-Jan. 19 .....                      | .....    | .....      |
| Mergansers .....          | Same as for Ducks .....  | 5 .....  | 15 .....   |
| Coots .....               | Same as for Ducks .....  | 15 ..... | 45 .....   |
| Canada Geese:             |  |          |            |
| North Zone .....          | Oct. 19-Nov. 10 &<br>Nov. 28-Jan. 5 &<br>Jan. 18-Jan. 29 ..... | 3 .....  | 9 .....    |
| Central Zone .....        | Oct. 26-Dec. 8 &<br>Dec. 21-Jan. 5 &<br>Jan. 18-Jan. 31 .....  | 3 .....  | 9 .....    |
| South Zone .....          | Nov. 2-Nov. 12 &<br>Nov. 30-Jan. 31 .....                      | 3 .....  | 9 .....    |
| Late Season Zone .....    | Feb. 1-Feb. 15 .....   | 5 .....  | 15 .....   |
| White-fronted Geese:      |  |          |            |
| North Zone .....          | Same as for Canada Geese .....                                 | 2 .....  | 6 .....    |
| Central Zone .....        | Same as for Canada Geese .....                                 | 2 .....  | 6 .....    |
| South Zone .....          | Same as for Canada Geese .....                                 | 2 .....  | 6 .....    |
| Brant:                    |  |          |            |
| North Zone .....          | Same as for Canada Geese .....                                 | 1 .....  | 3 .....    |
| Central Zone .....        | Same as for Canada Geese .....                                 | 1 .....  | 3 .....    |
| South Zone .....          | Same as for Canada Geese .....                                 | 1 .....  | 3 .....    |
| Light Geese:              |  |          |            |
| North Zone .....          | Oct. 19-Jan. 31 .....  | 20 ..... | .....      |
| Central Zone .....        | Same as North Zone .....                                       | 20 ..... | .....      |
| South Zone .....          | Same as North Zone .....                                       | 20 ..... | .....      |
| <i>Iowa</i>               |  |          |            |
| Ducks: .....              | .....  | 6 .....  | 18 .....   |
| North Zone .....          | Sept. 21-Sept. 25 &<br>Oct. 12-Dec. 5 .....                    | .....    | .....      |
| Missouri River Zone ..... | Sept. 21-Sept. 25 &<br>Oct. 26-Dec. 19 .....                   | .....    | .....      |
| South Zone .....          | Sept. 21-Sept. 25 &<br>Oct. 19-Dec. 12 .....                   | .....    | .....      |
| Mergansers .....          | Same as for Ducks .....  | 5 .....  | 15 .....   |
| Coots .....               | Same as for Ducks .....  | 15 ..... | 45 .....   |
| Canada Geese:             |  |          |            |
| North Zone .....          | Sept. 28-Oct. 31 &<br>Nov. 1-Jan. 3 .....                      | 2 .....  | 6 .....    |
| Missouri River Zone ..... | Oct. 12-Oct. 31 &<br>Nov. 1-Jan. 17 .....                      | 3 .....  | 9 .....    |
| South Zone .....          | Oct. 5-Oct. 31 &<br>Nov. 1-Jan. 10 .....                       | 2 .....  | 6 .....    |
| White-fronted Geese:      |  |          |            |
| North Zone .....          | Sept. 28-Dec. 10 .....   | 2 .....  | 6 .....    |
| Missouri River Zone ..... | Oct. 12-Dec. 24 .....  | 2 .....  | 6 .....    |
| South Zone .....          | Oct. 5-Dec. 17 .....   | 2 .....  | 6 .....    |
| Brant:                    |  |          |            |
| North Zone .....          | Same as for Canada geese .....                                 | 1 .....  | 3 .....    |
| Missouri River Zone ..... | Same as for Canada geese .....                                 | 1 .....  | 3 .....    |
| South Zone .....          | Same as for Canada geese .....                                 | 1 .....  | 3 .....    |
| Light Geese:              |  |          |            |
| North Zone .....          | Sept. 28-Jan. 12 .....   | 20 ..... | .....      |
| Missouri River Zone ..... | Oct. 12-Jan. 17 .....  | 20 ..... | .....      |
| South Zone .....          | Oct. 5-Jan. 17 .....   | 20 ..... | .....      |
| <i>Kentucky</i>           |  |          |            |
| Ducks .....               | .....  | 6 .....  | 18 .....   |
| West Zone .....           | Nov. 28-Jan. 26 .....  | .....    | .....      |
| East Zone .....           | Same as West Zone .....  | .....    | .....      |
| Mergansers .....          | Same as for Ducks .....  | 5 .....  | 15 .....   |
| Coots .....               | Same as for Ducks .....  | 15 ..... | 45 .....   |
| Canada Geese .....        | Nov. 28-Jan. 31 .....  | 3 .....  | 9 .....    |

|  | Season dates   | Limits |            |
|--|--|--------|------------|
|  |  | Bag    | Possession |
| White-fronted Geese .....                  | Nov. 28–Jan. 31 .....  | 2      | 6          |
| Brant .....                                | Nov. 28–Jan. 31 .....  | 2      | 6          |
| Light Geese .....                          | Nov. 28–Jan. 31 .....  | 20     | .....      |
| <i>Louisiana</i>                           |  |        |            |
| Ducks: .....                               | .....  | 6      | 18         |
| West Zone .....                            | Nov. 16–Dec. 15 &<br>Dec. 21–Jan. 19 .....                       | .....  | .....      |
| East Zone (including Catahoula Lake) ..... | Nov. 23–Dec. 8 &<br>Dec. 14–Jan. 26 .....                        | .....  | .....      |
| Coastal Zone .....                         | Nov. 9–Dec. 1 &<br>Dec. 14–Jan. 19 .....                         | .....  | .....      |
| Mergansers .....                           | Same as for Ducks .....  | 5      | 15         |
| Coots .....                                | Same as for Ducks .....  | 15     | 45         |
| Canada Geese (1):                          |  |        |            |
| West Zone .....                            | Nov. 16–Dec. 15 &<br>Dec. 21–Jan. 31 .....                       | 3      | 9          |
| East Zone .....                            | Nov. 9–Dec. 8 &<br>Dec. 14–Jan. 26 .....                         | 3      | 9          |
| Coastal Zone .....                         | Nov. 9–Dec. 1 &<br>Dec. 14–Jan. 31 .....                         | 3      | 9          |
| White-fronted (1):                         |  |        |            |
| West Zone .....                            | Nov. 16–Dec. 15 &<br>Dec. 21–Feb. 2 .....                        | 2      | 6          |
| East Zone .....                            | Nov. 9–Dec. 8 &<br>Dec. 14–Jan. 26 .....                         | 2      | 6          |
| Coastal Zone .....                         | Nov. 9–Dec. 1 &<br>Dec. 14–Feb. 2 .....                          | 2      | 6          |
| Brant .....                                | Closed .....   | .....  | .....      |
| Light Geese                                |  |        |            |
| West Zone .....                            | Same as for White-fronted .....                                  | 20     | .....      |
| East Zone .....                            | Same as for White-fronted .....                                  | 20     | .....      |
| Coastal Zone .....                         | Same as for White-fronted .....                                  | 20     | .....      |
| <i>Michigan</i>                            |  |        |            |
| Ducks (2): .....                           | .....  | 6      | 18         |
| North Zone .....                           | Sept. 21–Nov. 10 &<br>Nov. 23–Dec. 1 .....                       | .....  | .....      |
| Middle Zone .....                          | Oct. 5–Dec. 1 &<br>Dec. 14–Dec. 15 .....                         | .....  | .....      |
| South Zone .....                           | Oct. 12–Dec. 8 &<br>Dec. 28–Dec. 29 .....                        | .....  | .....      |
| Mergansers .....                           | Same as for Ducks .....  | 5      | 15         |
| Coots .....                                | Same as for Ducks .....  | 15     | 45         |
| Canada Geese:                              |  |        |            |
| North Zone .....                           | Sept. 11–Dec. 11 .....   | 2      | 6          |
| Middle Zone .....                          | Sept. 21–Sept. 29 &<br>Oct. 5–Dec. 26 .....                      | 2      | 6          |
| South Zone:                                |  |        |            |
| Muskegon Wastewater GMU .....              | Oct. 16–Nov. 13 &<br>Dec. 1–Dec. 22 .....                        | 2      | 6          |
| Allegan County GMU .....                   | Nov. 2–Jan. 31 .....   | 2      | 6          |
| Saginaw County GMU .....                   | Sept. 21–Sept. 23 &<br>Oct. 12–Dec. 8 &<br>Dec. 28–Jan. 27 ..... | 2      | 6          |
| Tuscola/Huron GMU .....                    | Sept. 21–Sept. 27 &<br>Oct. 12–Dec. 8 &<br>Dec. 28–Jan. 23 ..... | 2      | 6          |
| Remainder of South Zone .....              | Sept. 21–Sept. 23 &<br>Oct. 12–Dec. 8 &<br>Dec. 28–Dec. 29 ..... | 2      | 6          |
| Southern MI Late Season (3) .....          | Jan. 18–Feb. 15 .....  | 5      | 15         |
| White-fronted Geese:                       |  |        |            |
| North Zone .....                           | Sept. 11–Dec. 7 .....  | 1      | 3          |
| Middle Zone .....                          | Oct. 5–Dec. 26 .....   | 1      | 3          |
| South Zone .....                           | Oct. 12–Dec. 8 &<br>Dec. 28–Dec. 29 &<br>Jan. 18–Jan. 31 .....   | 1      | 3          |
| Light Geese:                               |  |        |            |
| North Zone .....                           | Same as for Canada geese .....                                   | 20     | .....      |
| Middle Zone .....                          | Same as for Canada geese .....                                   | 20     | .....      |
| South Zone .....                           | Oct. 12–Dec. 8 &<br>Dec. 28–Dec. 29 &<br>Jan. 18–Feb. 15 .....   | 20     | .....      |

|                               | Season dates                          | Limits |            |
|-------------------------------|---------------------------------------|--------|------------|
|                               |                                       | Bag    | Possession |
| Brant:                        |                                       |        |            |
| North Zone .....              | Same as for White-fronted geese ..... | 1      | 3          |
| Middle Zone .....             | Same as for White-fronted geese ..... | 1      | 3          |
| South Zone .....              | Same as for White-fronted geese ..... | 1      | 3          |
| <i>Minnesota</i>              |                                       |        |            |
| Ducks: .....                  |                                       | 6      | 18         |
| North Zone .....              | Sept. 21–Nov. 19 .....                |        |            |
| Central Zone .....            | Sept. 21–Sept. 29 & .....             |        |            |
|                               | Oct. 5–Nov. 24 .....                  |        |            |
| South Zone .....              | Sept. 21–Sept. 29 & .....             |        |            |
|                               | Oct. 12–Dec. 1 .....                  |        |            |
| Mergansers .....              | Same as for Ducks .....               | 5      | 15         |
| Coots (4) .....               | Same as for Ducks .....               | 15     | 45         |
| Geese:                        |                                       |        |            |
| North Zone: .....             | Sept. 21–Dec. 16 .....                |        |            |
| Canada .....                  |                                       | 3      | 9          |
| White-fronted and Brant ..... |                                       | 1      | 3          |
| Light Geese .....             |                                       | 20     |            |
| Central Zone: .....           | Sept. 21–Sept. 29 & .....             |        |            |
|                               | Oct. 5–Dec. 21 .....                  |        |            |
| Canada .....                  |                                       | 3      | 9          |
| White-fronted and Brant ..... |                                       | 1      | 3          |
| Light Geese .....             |                                       | 20     |            |
| South Zone: .....             | Sept. 21–Sept. 29 & .....             |        |            |
|                               | Oct. 12–Dec. 28 .....                 |        |            |
| Canada .....                  |                                       | 3      | 9          |
| White-fronted and Brant ..... |                                       | 1      | 3          |
| Light Geese .....             |                                       | 20     |            |
| <i>Mississippi</i>            |                                       |        |            |
| Ducks .....                   | Nov. 22–Nov. 24 & .....               | 6      | 18         |
|                               | Nov. 29–Dec. 1 & .....                | 6      | 18         |
|                               | Dec. 4–Jan. 26 .....                  | 6      | 18         |
| Mergansers .....              | Same as for Ducks .....               | 5      | 15         |
| Coots .....                   | Same as for Ducks .....               | 15     | 45         |
| Canada Geese .....            | Nov. 14–Jan. 26 .....                 | 3      | 9          |
| White-fronted .....           | Nov. 14–Jan. 26 .....                 | 2      | 6          |
| Brant .....                   | Same as for Canada geese .....        | 1      | 3          |
| Light Geese .....             | Same as for Canada geese .....        | 20     |            |
| <i>Missouri</i>               |                                       |        |            |
| Ducks and Mergansers: .....   |                                       | 6      | 18         |
| North Zone .....              | Oct. 26–Dec. 24 .....                 |        |            |
| Middle Zone .....             | Nov. 2–Dec. 31 .....                  |        |            |
| South Zone .....              | Nov. 28–Jan. 26 .....                 |        |            |
| Coots .....                   | Same as for Ducks .....               | 15     | 45         |
| Canada Geese:                 |                                       |        |            |
| North Zone .....              | Oct. 5–Oct. 31 & .....                | 3      | 9          |
|                               | Nov. 28–Jan. 31 .....                 | 3      | 9          |
| Middle Zone .....             | Same as North Zone .....              | 3      | 9          |
| South Zone .....              | Same as North Zone .....              | 3      | 9          |
| White-fronted Geese:          |                                       |        |            |
| North Zone .....              | Nov. 28–Jan. 31 .....                 | 2      | 6          |
| Middle Zone .....             | Same as North Zone .....              | 2      | 6          |
| South Zone .....              | Same as North Zone .....              | 2      | 6          |
| Brant:                        |                                       |        |            |
| North Zone .....              | Same as for Canada geese .....        | 1      | 3          |
| Middle Zone .....             | Same as for Canada geese .....        | 1      | 3          |
| South Zone .....              | Same as for Canada geese .....        | 1      | 3          |
| Light Geese:                  |                                       |        |            |
| North Zone .....              | Oct. 26–Jan. 31 .....                 | 20     |            |
| Middle Zone .....             | Same as North Zone .....              | 20     |            |
| South Zone .....              | Same as North Zone .....              | 20     |            |
| <i>Ohio</i>                   |                                       |        |            |
| Ducks (2): .....              |                                       | 6      | 18         |
| Lake Erie Marsh Zone .....    | Oct. 12–Oct. 27 & .....               |        |            |
|                               | Nov. 9–Dec. 22 .....                  |        |            |
| North Zone .....              | Oct. 19–Nov. 3 & .....                |        |            |
|                               | Nov. 30–Jan. 12 .....                 |        |            |
| South Zone .....              | Oct. 19–Nov. 3 & .....                |        |            |
|                               | Dec. 14–Jan. 26 .....                 |        |            |
| Mergansers .....              | Same as for Ducks .....               | 5      | 15         |
| Coots .....                   | Same as for Ducks .....               | 15     | 45         |
| Canada Geese:                 |                                       |        |            |

|                                   | Season dates                   | Limits |            |
|-----------------------------------|--------------------------------|--------|------------|
|                                   |                                | Bag    | Possession |
| Lake Erie Goose Zone .....        | Oct. 12– Oct. 27 & .....       | 3      | 9          |
|                                   | Nov. 9–Jan. 9 .....            | 3      | 9          |
| North Zone .....                  | Oct. 19–Nov. 3 & .....         | 3      | 9          |
|                                   | Nov. 30–Jan. 30 .....          | 3      | 9          |
| South Zone .....                  | Oct. 19–Nov. 3 & .....         | 3      | 9          |
|                                   | Nov. 30–Jan. 30 .....          | 3      | 9          |
| White-fronted Geese .....         | Same as for Canada geese ..... | 1      | 3          |
| Brant .....                       | Same as for Canada geese ..... | 1      | 3          |
| Light Geese .....                 | Same as for Canada geese ..... | 10     | 30         |
| <i>Tennessee</i>                  |                                |        |            |
| Ducks: .....                      | .....                          | 6      | 18         |
| Reelfoot Zone .....               | Nov. 16–Nov. 17 & .....        | .....  | .....      |
|                                   | Nov. 30–Jan. 26 .....          | .....  | .....      |
| State Zone .....                  | Nov. 28–Jan. 26 .....          | .....  | .....      |
| Mergansers .....                  | Same as for Ducks .....        | 5      | 15         |
| Coots .....                       | Same as for Ducks .....        | 15     | 45         |
| Canada Geese:                     |                                |        |            |
| Northwest Zone .....              | Oct. 12–Oct. 16 & .....        | 2      | 6          |
|                                   | Nov. 16–Nov. 17 & .....        | 2      | 6          |
|                                   | Nov. 30–Feb. 8 .....           | 2      | 6          |
| Southwest Zone .....              | Oct. 12–Oct. 29 & .....        | 2      | 6          |
|                                   | Nov. 28–Jan. 26 .....          | 2      | 6          |
| Kentucky/Barkley Lakes Zone ..... | Same as Southwest Zone .....   | 2      | 6          |
| Rest of State .....               | Same as Southwest Zone .....   | 2      | 6          |
| White-fronted Geese .....         | Nov. 28–Feb. 8 .....           | 2      | 6          |
| Brant .....                       | Nov. 23–Jan. 31 .....          | 2      | 6          |
| Light Geese .....                 | Nov. 24–Mar. 10 .....          | 20     | .....      |
| <i>Wisconsin</i>                  |                                |        |            |
| Ducks (2): .....                  | .....                          | 6      | 18         |
| North Zone .....                  | Sept. 21–Nov. 19 .....         | .....  | .....      |
| South Zone .....                  | Sept. 28–Oct. 6 & .....        | .....  | .....      |
|                                   | Oct. 12–Dec. 1 .....           | .....  | .....      |
| Mississippi River Zone .....      | Sept. 21–Sept. 29 & .....      | .....  | .....      |
|                                   | Oct. 12–Dec. 1 .....           | .....  | .....      |
| Mergansers .....                  | Same as for Ducks .....        | 5      | 15         |
| Coots .....                       | Same as for Ducks .....        | 15     | 45         |
| Canada Geese:                     |                                |        |            |
| North Zone .....                  | Sept. 16–Dec. 16 .....         | 2      | 6          |
| South Zone: .....                 | .....                          | .....  | .....      |
| Horicon Zone .....                | Sept. 16–Dec. 16 .....         | 2      | 6          |
| Mississippi River Subzone .....   | Sept. 21–Sept. 29 & .....      | 2      | 6          |
|                                   | Oct. 12–Jan. 2 .....           | 2      | 6          |
| Remainder of South Zone .....     | Sept. 16–Oct. 6 & .....        | 2      | 6          |
|                                   | Oct. 12–Dec. 21 .....          | 2      | 6          |
| White-fronted Geese:              |                                |        |            |
| North Zone .....                  | Sept. 20–Dec. 16 .....         | 2      | 6          |
| South Zone:                       |                                |        |            |
| Horicon Zone .....                | Sept. 20–Dec. 16 .....         | 1      | 3          |
| Mississippi River Subzone .....   | Sept. 25–Sept. 29 & .....      | 2      | 6          |
|                                   | Oct. 12–Jan. 2 .....           | 2      | 6          |
| Remainder of South Zone .....     | Sept. 20–Oct. 6 & .....        | 2      | 6          |
|                                   | Oct. 12–Dec. 21 .....          | 2      | 6          |
| Brant .....                       | Same as for Canada geese ..... | 2      | 6          |
| Light Geese .....                 | Same as for Canada geese ..... | 20     | .....      |

(1) In *Louisiana*, during the Canada goose season, the daily bag limit is 3 dark geese (whitefronts and Canada geese) with no more than 2 white-fronted geese. Possession limits are three times the daily bag limits.

(2) In *Michigan*, *Ohio*, and *Wisconsin*, the daily bag limit may include no more than one hen mallard.

(3) In *Michigan*, the Southern Michigan Late Canada goose season excludes the Goose Management Units (GMUs).

(4) In *Minnesota*, the daily bag limit is 15 and the possession limit is 45 coots and moorhens in the aggregate.

## Central Flyway

### Flyway-Wide Restrictions

Duck Limits: The daily bag limit is 6 ducks, which may include no more than 5 mallards (2 female mallards), 1 mottled duck, 2 pintails, 2 canvasbacks,

2 redheads, 3 scaup, and 3 wood ducks. The possession limit is three times the daily bag limit.

Merganser Limits: The daily bag limit is 5 mergansers with 15 in possession and may include no more than 2 hooded

mergansers daily and 6 in possession. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 2 daily and 6 in possession may be hooded mergansers.

|                                 | Season dates                         | Limits |            |
|---------------------------------|--------------------------------------|--------|------------|
|                                 |                                      | Bag    | Possession |
| <i>Colorado</i>                 |                                      |        |            |
| Ducks                           |                                      | 6      | 18         |
| Southeast Zone                  | Oct. 23–Jan. 26                      |        |            |
| Northeast Zone                  | Oct. 12–Dec. 2 &<br>Dec. 14–Jan. 26  |        |            |
| Mountain/Foothills Zone         | Oct. 5–Dec. 2 &<br>Dec. 21–Jan. 26   |        |            |
| Coots                           | Same as for Ducks                    | 15     | 45         |
| Mergansers                      | Same as for Ducks                    | 5      | 15         |
| Dark Geese:                     |                                      |        |            |
| Northern Front Range Unit       | Oct. 5–Oct. 23 &<br>Nov. 23–Feb. 16  | 5      | 15         |
| South Park/San Luis Valley Unit | Same as N. Front Range Unit          | 5      | 15         |
| North Park Unit                 | Same as N. Front Range Unit          | 5      | 15         |
| Rest of State in Central Flyway | Nov. 23–Feb. 16                      | 5      | 15         |
| Light Geese:                    |                                      |        |            |
| Northern Front Range Unit       | Nov. 2–Feb. 16                       | 50     |            |
| South Park/San Luis Valley Unit | Same as N. Front Range Unit          | 50     |            |
| North Park Unit                 | Same as N. Front Range Unit          | 50     |            |
| Rest of State in Central Flyway | Same as N. Front Range Unit          | 50     |            |
| <i>Kansas</i>                   |                                      |        |            |
| Ducks                           |                                      | 6      | 18         |
| High Plains                     | Oct. 5–Dec. 2 &<br>Dec. 21–Jan. 26   |        |            |
| Low Plains:                     |                                      |        |            |
| Early Zone                      | Oct. 5–Dec. 1 &<br>Dec. 21–Jan. 5    |        |            |
| Late Zone                       | Oct. 26–Dec. 29 &<br>Jan. 18–Jan. 26 |        |            |
| Southeast Zone                  | Nov. 2–Nov. 3 &<br>Nov. 16–Jan. 26   |        |            |
| Mergansers                      | Same as for Ducks                    | 5      | 15         |
| Coots                           | Same as for Ducks                    | 15     | 45         |
| Canada Geese and Brant          | Oct. 26–Nov. 3 &<br>Nov. 6–Feb. 9    | 6      | 18         |
| White-fronted Geese             | Oct. 26–Dec. 29 &<br>Feb. 1–Feb. 9   | 2      | 6          |
| Light Geese                     | Oct. 26–Nov. 3 &<br>Nov. 6–Feb. 9    | 50     |            |
| <i>Montana</i>                  |                                      |        |            |
| Ducks and Mergansers            |                                      | 6      | 18         |
| Zone 1                          | Sept. 28–Jan. 2                      |        |            |
| Zone 2                          | Same as Zone 1                       |        |            |
| Coots                           | Same as for Ducks                    | 15     | 45         |
| Dark Geese                      | Sept. 28–Jan. 5 &<br>Jan. 10–Jan. 14 | 5      | 15         |
| Light Geese                     | Sept. 28–Jan. 5 &<br>Jan. 10–Jan. 14 | 20     | 60         |
| <i>Nebraska</i>                 |                                      |        |            |
| Ducks (1)                       |                                      | 6      | 18         |
| Zone 1                          | Oct. 12–Dec. 24                      |        |            |
| Zone 2:                         |                                      |        |            |
| Low Plains                      | Oct. 5–Dec. 17                       |        |            |
| High Plains                     | Oct. 5–Dec. 17 &<br>Jan. 5–Jan. 26   |        |            |
| Zone 3:                         |                                      |        |            |
| Low Plains                      | Oct. 23–Jan. 4                       |        |            |
| High Plains                     | Oct. 23–Jan. 4 &<br>Jan. 5–Jan. 26   |        |            |
| Zone 4                          | Oct. 5–Dec. 17                       |        |            |
| Mergansers                      | Same as for Ducks                    | 5      | 15         |
| Coots                           | Same as for Ducks                    | 15     | 45         |
| Canada Geese:                   |                                      |        |            |
| Niobrara Unit                   | Oct. 28–Feb. 9                       | 5      | 15         |
| East Unit                       | Oct. 28–Feb. 9                       | 5      | 15         |
| North Central Unit              | Oct. 5–Jan. 17                       | 5      | 15         |
| Platte River Unit               | Oct. 28–Feb. 9                       | 5      | 15         |
| Panhandle Unit                  | Oct. 28–Feb. 9                       | 5      | 15         |
| White-fronted Geese             | Oct. 3–Dec. 13 &<br>Feb. 1–Feb. 2    | 2      | 6          |
| Light Geese                     | Oct. 5–Jan. 1 &<br>Jan. 25–Feb. 9    | 20     |            |

|                                   | Season dates                         | Limits |            |
|-----------------------------------|--------------------------------------|--------|------------|
|                                   |                                      | Bag    | Possession |
| <i>New Mexico</i>                 |                                      |        |            |
| Ducks and Mergansers (2)          |                                      | 6      | 18         |
| North Zone                        | Oct. 5–Jan. 8                        |        |            |
| South Zone                        | Oct. 23–Jan. 26                      |        |            |
| Coots                             | Same as for Ducks                    | 15     | 45         |
| Dark Geese (3)                    |                                      |        |            |
| Middle Rio Grande Valley Unit (3) | Dec. 28–Jan. 19                      | 2      | 2          |
| Rest of State                     | Oct. 12–Jan. 26                      | 5      | 15         |
| Light Geese                       | Oct. 12–Jan. 26                      | 50     |            |
| <i>North Dakota</i>               |                                      |        |            |
| Ducks:                            |                                      | 6      | 18         |
| High Plains                       | Sept. 21–Dec. 1 &<br>Dec. 7–Dec. 29  |        |            |
| Remainder of State                | Sept. 21–Dec. 1                      |        |            |
| Mergansers                        | Same as for Ducks                    | 5      | 15         |
| Coots                             | Same as for Ducks                    | 15     | 45         |
| Canada Geese (4):                 |                                      |        |            |
| Missouri River Zone               | Sept. 21–Dec. 27                     | 5      | 15         |
| Rest of State                     | Sept. 21–Dec. 21                     | 8      | 24         |
| White-fronted Geese               | Sept. 21–Dec. 1                      | 2      | 6          |
| Light Geese                       | Sept. 21–Dec. 29                     | 50     |            |
| <i>Oklahoma</i>                   |                                      |        |            |
| Ducks                             |                                      | 6      | 18         |
| High Plains                       | Oct. 12–Jan. 8                       |        |            |
| Low Plains:                       |                                      |        |            |
| Zone 1                            | Oct. 26–Dec. 1 &<br>Dec. 14–Jan. 19  |        |            |
| Zone 2                            | Nov. 2–Dec. 1 &<br>Dec. 14–Jan. 26   |        |            |
| Mergansers                        | Same as for Ducks                    | 5      | 15         |
| Coots                             | Same as for Ducks                    | 15     | 45         |
| Canada Geese                      | Nov. 2–Dec. 1 &<br>Dec. 14–Feb. 16   | 8      | 24         |
| White-fronted Geese               | Nov. 2–Dec. 1 &<br>Dec. 14–Feb. 9    | 1      | 3          |
| Light Geese                       | Nov. 2–Dec. 1 &<br>Dec. 14–Feb. 16   | 50     |            |
| <i>South Dakota</i>               |                                      |        |            |
| Ducks:                            |                                      | 6      | 18         |
| High Plains                       | Oct. 12–Dec. 24 &<br>Dec. 25–Jan. 16 |        |            |
| Low Plains:                       |                                      |        |            |
| North Zone                        | Sept. 28–Dec. 10                     |        |            |
| Middle Zone                       | Same as for North Zone               |        |            |
| South Zone                        | Oct. 12–Dec. 24                      |        |            |
| Mergansers                        | Same as for Ducks                    | 5      | 15         |
| Coots                             | Same as for Ducks                    | 15     | 45         |
| Canada Geese:                     |                                      |        |            |
| Unit 1                            | Oct. 1–Dec. 16                       | 8      | 24         |
| Unit 2                            | Nov. 2–Feb. 14                       | 4      | 12         |
| Unit 3                            | Oct. 19–Dec. 22 &<br>Jan. 11–Jan. 19 | 4      | 12         |
| White-fronted Geese               | Sept. 28–Dec. 8                      | 2      | 6          |
| Light Geese                       | Sept. 28–Dec. 22                     | 20     |            |
| <i>Texas</i>                      |                                      |        |            |
| Ducks (5)                         |                                      | 6      | 18         |
| High Plains                       | Oct. 26–Oct. 27 &<br>Nov. 1–Jan. 26  |        |            |
| Low Plains:                       |                                      |        |            |
| North Zone                        | Nov. 2–Dec. 8 &<br>Dec. 21–Jan. 26   |        |            |
| South Zone                        | Nov. 2–Dec. 1 &<br>Dec. 14–Jan. 26   |        |            |
| Mergansers                        | Same as for Ducks                    | 5      | 15         |
| Coots                             | Same as for Ducks                    | 15     | 45         |
| Canada Geese and Brant:           |                                      |        |            |
| East Tier:                        |                                      |        |            |
| South Zone                        | Nov. 2–Jan. 26                       | 3      | 9          |
| North Zone                        | Same as South Zone                   | 3      | 9          |
| West Tier (6)                     | Nov. 2–Feb. 2                        | 5      | 15         |
| White-fronted Geese:              |                                      |        |            |
| East Tier:                        |                                      |        |            |

|                     | Season dates                   | Limits |            |
|---------------------|--------------------------------|--------|------------|
|                     |                                | Bag    | Possession |
| South Zone .....    | Nov. 2–Jan. 12 .....           | 2      | 6          |
| North Zone .....    | Same as South Zone .....       | 2      | 6          |
| West Tier (6) ..... | Same as for Canada geese ..... | 1      | 3          |
| Light Geese:        |                                |        |            |
| East Tier:          |                                |        |            |
| South Zone .....    | Nov. 2–Jan. 26 .....           | 20     |            |
| North Zone .....    | Same as South Zone .....       | 20     |            |
| West Tier .....     | Same as for Canada geese ..... | 20     |            |
| Wyoming:            |                                |        |            |
| Ducks (7): .....    |                                | 6      | 18         |
| Zone C1 .....       | Oct. 5–Oct. 22 & .....         |        |            |
|                     | Nov. 2–Jan. 19 .....           |        |            |
| Zone C2 .....       | Sept. 21–Dec. 1 & .....        |        |            |
|                     | Dec. 14–Jan. 7 .....           |        |            |
| Zone C3 .....       | Same as Zone C2 .....          |        |            |
| Mergansers .....    | Same as for Ducks .....        | 5      | 15         |
| Coots .....         | Same as for Ducks .....        | 15     | 45         |
| Dark Geese          |                                |        |            |
| Zone G1A (8) .....  | Oct. 5–Oct. 22 & .....         | 2      | 6          |
|                     | Nov. 22–Feb. 16 .....          | 4      | 12         |
| Zone G1 .....       | Oct. 5–Oct. 22 & .....         | 5      | 15         |
|                     | Nov. 2–Dec. 1 & .....          | 5      | 15         |
|                     | Dec. 7–Feb. 1 .....            | 5      | 15         |
| Zone G2 .....       | Sept. 21–Dec. 1 & .....        | 5      | 15         |
|                     | Dec. 14–Jan. 15 .....          | 5      | 15         |
| Zone G3 .....       | Same as Zone G2 .....          | 5      | 15         |
| Light Geese .....   | Oct. 5–Dec. 30 & .....         | 10     | 30         |
|                     | Jan. 30–Feb. 16 .....          | 10     | 30         |

(1) In *Nebraska*, the daily bag limit for scaup is 2.

(2) In *New Mexico*, Mexican-like ducks are included in the aggregate with mallards.

(3) In *New Mexico*, the season for dark geese is closed in Bernalillo, Sandoval, Sierra, and Valencia Counties. In the Middle Rio Grande Valley Unit, a limited season is established. See State regulations for additional information.

(4) In *North Dakota*, see State regulations for additional shooting hour restrictions.

(5) In *Texas*, the daily bag limit is 6 ducks, which may include no more than 5 mallards (only 2 of which may be hens), 2 redheads, 3 wood ducks, 3 scaup, 2 canvasbacks, 2 pintails, and 1 dusky duck (mottled duck, Mexican-like duck, black duck and their hybrids). The season for dusky ducks is closed the first 5 days of the season in all zones. The possession limit is three times the daily bag limit.

(6) In *Texas*, in the West Tier the daily bag limit for dark geese is 5 in the aggregate and may include no more than 1 white-fronted goose.

(7) In *Wyoming*, the daily bag limit may include no more than 1 hen mallard.

(8) See State regulations for additional restrictions.

## Pacific Flyway

### Flyway-Wide Restrictions

Duck and Merganser Limits: The daily bag limit of 7 ducks (including

mergansers) may include no more than 2 female mallards, 2 pintails, 2 redheads, 3 scaup, and 2 canvasbacks. The possession limit is three times the daily bag limit.

Coot and Common Moorhen Limits: Daily bag and possession limits are in the aggregate for the two species.

|                           | Season dates                   | Limits |            |
|---------------------------|--------------------------------|--------|------------|
|                           |                                | Bag    | Possession |
| Arizona                   |                                |        |            |
| Ducks (1) .....           |                                | 7      | 21         |
| North Zone:               |                                |        |            |
| Scaup .....               | Oct. 19–Jan. 12 .....          | 3      | 9          |
| Other Ducks .....         | Oct. 4–Jan. 12 .....           | 7      | 21         |
| South Zone:               |                                |        |            |
| Scaup .....               | Nov. 2–Jan. 26 .....           | 3      | 9          |
| Other Ducks .....         | Oct. 18–Jan. 26 .....          | 7      | 21         |
| Coots and moorhens .....  | Same as for Other Ducks .....  | 25     | 75         |
| Canada Geese and Brant:   |                                |        |            |
| North Zone .....          | Oct. 4–Jan. 12 .....           | 3      | 9          |
| South Zone .....          | Oct. 18–Jan. 26 .....          | 3      | 9          |
| White-fronted Geese ..... | Same as for Canada geese ..... | 3      | 9          |
| Light Geese .....         | Same as for Canada geese ..... | 10     | 30         |
| California                |                                |        |            |
| Ducks: .....              |                                | 7      | 21         |
| Northeastern Zone:        |                                |        |            |
| Scaup .....               | Oct. 5–Dec. 29 .....           | 3      | 9          |
| Other Ducks .....         | Oct. 5–Jan. 17 .....           | 7      | 21         |
| Colorado River Zone:      |                                |        |            |
| Scaup .....               | Nov. 2–Jan. 26 .....           | 3      | 9          |

|                                     | Season dates                   | Limits |            |
|-------------------------------------|--------------------------------|--------|------------|
|                                     |                                | Bag    | Possession |
| Other Ducks .....                   | Oct. 18–Jan. 26 .....          | 7      | 21         |
| Southern Zone:                      |                                |        |            |
| Scaup .....                         | Nov. 2–Jan. 26 .....           | 3      | 9          |
| Other Ducks .....                   | Oct. 19–Jan. 26 .....          | 7      | 21         |
| Southern San Joaquin Valley Zone    |                                |        |            |
| Scaup .....                         | Nov. 2–Jan. 26 .....           | 3      | 9          |
| Other Ducks .....                   | Oct. 5–Oct. 20 & .....         | 7      | 21         |
|                                     | Nov. 2–Jan. 26 .....           |        |            |
| Balance-of-State Zone:              |                                |        |            |
| Scaup .....                         | Nov. 2–Jan. 26 .....           | 3      | 9          |
| Other Ducks .....                   | Oct. 19–Jan. 26 .....          | 7      | 21         |
| Coots and moorhens .....            | Same as for Other Ducks .....  | 25     | 25         |
| Canada Geese (2)(3):                |                                |        |            |
| Northeastern Zone (4) .....         | Oct. 5–Jan. 12 .....           | 6      | 18         |
| Colorado River Zone .....           | Oct. 18–Jan. 26 .....          | 4      | 12         |
| Southern Zone (5) .....             | Oct. 19–Jan. 26 .....          | 3      | 9          |
| Balance-of-State Zone .....         | Sept. 28–Oct. 2 & .....        | 6      | 18         |
|                                     | Oct. 19–Jan. 26 .....          | 6      | 18         |
| Del Norte & Humboldt Counties ..... | Oct. 31–Jan. 26 .....          | 6      | 18         |
|                                     | Feb. 22–Mar. 10 .....          | 6      | 18         |
| White-fronted Geese:                |                                |        |            |
| Northeastern Zone .....             | Oct. 5–Jan. 12 & .....         | 6      | 18         |
|                                     | Mar. 6–Mar. 10 .....           | 6      | 18         |
| Colorado River Zone .....           | Oct. 18–Jan. 26 .....          | 6      | 18         |
| Southern Zone (5) .....             | Oct. 19–Jan. 26 .....          | 3      | 9          |
| Balance-of-State Zone:              |                                |        |            |
| Sacramento Valley .....             | Oct. 19–Dec. 21 .....          | 3      | 9          |
| Rest of Zone .....                  | Oct. 19–Jan. 26 .....          | 6      | 18         |
|                                     | Feb. 15–Feb. 19 .....          | 6      | 18         |
| Del Norte & Humboldt Counties ..... | Oct. 19–Jan. 26 .....          | 6      | 18         |
| Light Geese:                        |                                |        |            |
| Northeastern Zone .....             | Nov. 1–Jan. 12 & .....         | 10     | 30         |
|                                     | Feb. 7–Mar. 10 .....           | 10     | 30         |
| Colorado River Zone .....           | Oct. 18–Jan. 26 .....          | 10     | 30         |
| Southern Zone:                      |                                |        |            |
| Imperial Valley .....               | Nov. 2–Jan. 26 & .....         | 10     | 30         |
|                                     | Feb. 8–Feb. 23 .....           | 10     | 30         |
| Rest of Zone .....                  | Oct. 19–Jan. 26 .....          | 10     | 30         |
| Balance-of-State Zone .....         | Oct. 19–Jan. 26 & .....        | 10     | 30         |
|                                     | Feb. 15–Feb. 19 .....          | 10     | 30         |
| Del Norte & Humboldt Counties ..... | Oct. 19–Jan. 26 .....          | 10     | 30         |
| Brant:                              |                                |        |            |
| North Zone .....                    | Nov. 7–Dec. 6 .....            | 2      | 6          |
| South Zone .....                    | Nov. 9–Dec. 8 .....            | 2      | 6          |
| Colorado                            |                                |        |            |
| Ducks .....                         |                                | 7      | 21         |
| Scaup .....                         | Sept. 21–Oct. 9 & .....        | 3      | 9          |
|                                     | Nov. 2–Jan. 5 .....            | 3      | 9          |
| Other Ducks .....                   | Sept. 21–Oct. 9 & .....        | 7      | 21         |
|                                     | Nov. 2–Jan. 26 .....           | 7      | 21         |
| Coots and moorhens .....            | Same as for Other Ducks .....  | 25     | 75         |
| Canada Geese and Brant .....        | Sept. 21–Oct. 9 & .....        | 4      | 12         |
|                                     | Nov. 2–Jan. 26 .....           | 4      | 12         |
| White-fronted Geese .....           | Same as for Canada Geese ..... | 4      | 12         |
| Light Geese .....                   | Same as for Canada Geese ..... | 10     | 30         |
| Idaho                               |                                |        |            |
| Ducks .....                         |                                | 7      | 21         |
| Zone 1:                             |                                |        |            |
| Scaup .....                         | Oct. 26–Jan. 17 .....          | 3      | 9          |
| Other Ducks .....                   | Oct. 5–Jan. 17 .....           | 7      | 21         |
| Zone 2:                             |                                |        |            |
| Scaup .....                         | Nov. 2–Jan. 24 .....           | 3      | 9          |
| Other Ducks .....                   | Oct. 12–Jan. 24 .....          | 7      | 21         |
| Zone 3:                             |                                |        |            |
| Scaup .....                         | Nov. 2–Jan. 24 .....           | 3      | 9          |
| Other Ducks .....                   | Oct. 12–Jan. 24 .....          | 7      | 21         |
| Coots .....                         | Same as for Other Ducks .....  | 25     | 75         |
| Canada Geese and Brant:             |                                |        |            |
| Zone 1 .....                        | Oct. 5–Jan. 17 .....           | 4      | 12         |
| Zone 2 .....                        | Oct. 12–Jan. 24 .....          | 4      | 12         |
| Zone 3 .....                        | Same as Zone 2 .....           | 4      | 12         |
| White-fronted Geese:                |                                |        |            |

|                                      | Season dates                      | Limits |            |
|--------------------------------------|-----------------------------------|--------|------------|
|                                      |                                   | Bag    | Possession |
| Zone 1 .....                         | Oct. 5–Jan. 17 .....              | 6      | 18         |
| Zone 2 .....                         | Oct. 12–Jan. 24 .....             | 6      | 18         |
| Zone 3 .....                         | Nov. 11–Feb. 23 .....             | 6      | 18         |
| Light Geese:                         |                                   |        |            |
| Zone 1 (6) .....                     | Oct. 5–Jan. 17 .....              | 20     | 60         |
| Zone 2 .....                         | Oct. 29–Jan. 17 & .....           | 20     | 60         |
|                                      | Feb. 15–Mar. 10 .....             | 20     | 60         |
| Zone 3 .....                         | Nov. 26–Mar. 10 .....             | 20     | 60         |
| Zone 4 .....                         | Oct. 12–Jan. 24 .....             | 20     | 60         |
| <i>Montana</i>                       |                                   |        |            |
| Ducks .....                          |                                   | 7      | 21         |
| Scaup .....                          | Sept. 28–Dec. 22 .....            | 3      | 9          |
| Other Ducks .....                    | Sept. 28–Jan. 5 & .....           | 7      | 21         |
|                                      | Jan. 10–Jan. 14 .....             | 7      | 21         |
| Coots .....                          | Same as for Other Ducks .....     | 25     | 25         |
| Dark Geese (7) .....                 | Sept. 28–Jan. 5 & .....           | 4      | 12         |
|                                      | Jan. 10–Jan. 14 .....             | 4      | 12         |
| Light Geese .....                    | Same as for Dark Geese .....      | 20     | 60         |
| <i>Nevada</i>                        |                                   |        |            |
| Ducks .....                          |                                   | 7      | 21         |
| Northeast Zone:                      |                                   |        |            |
| Scaup .....                          | Sept. 21–Oct. 30 & .....          | 3      | 9          |
|                                      | Nov. 2–Dec. 17 .....              | 3      | 9          |
| Other Ducks .....                    | Sept. 21–Oct. 30 & .....          | 7      | 21         |
|                                      | Nov. 2–Jan. 5 .....               | 7      | 21         |
| Northwest Zone: .....                | Oct. 13–Oct. 31 & .....           |        |            |
| Scaup .....                          | Nov. 2–Jan. 26 .....              | 3      | 9          |
| Other Ducks .....                    | Oct. 12–Oct. 30 & .....           | 7      | 21         |
|                                      | Nov. 2–Jan. 26 .....              | 7      | 21         |
| South Zone (8): .....                | Same as Northwest Zone .....      |        |            |
| Coots and moorhens .....             | Same as for Other Ducks .....     | 25     | 75         |
| Canada Geese and Brant:              |                                   |        |            |
| Northeast Zone .....                 | Same as for Other Ducks .....     | 3      | 9          |
| Northwest Zone .....                 | Same as for Other Ducks .....     | 3      | 9          |
| South Zone (8) .....                 | Same as for Other Ducks .....     | 3      | 9          |
| White-fronted Geese .....            | Same as for Canada Geese .....    | 6      | 18         |
| Light Geese (9):                     |                                   |        |            |
| Northeast Zone .....                 | Nov. 2–Jan. 5 & .....             | 20     | 60         |
|                                      | Feb. 22–Mar. 10 .....             | 20     | 60         |
| Northwest Zone .....                 | Nov. 2–Jan. 26 & .....            | 20     | 60         |
|                                      | Feb. 22–Mar. 10 .....             | 20     | 60         |
| South Zone (8) .....                 | Nov. 2–Jan. 26 .....              | 20     | 60         |
| <i>New Mexico</i>                    |                                   |        |            |
| Ducks .....                          |                                   | 7      | 21         |
| Scaup .....                          | Oct. 12–Jan. 5 .....              | 3      | 9          |
| Other Ducks .....                    | Oct. 12–Jan. 24 .....             | 7      | 21         |
| Coots, Moorhens and Gallinules ..... | Same as for Other Ducks .....     | 25     | 75         |
| Canada Geese and Brant:              |                                   |        |            |
| North Zone .....                     | Sept. 21–Oct. 6 & .....           | 3      | 9          |
|                                      | Oct. 26–Jan. 24 .....             | 3      | 9          |
| South Zone .....                     | Oct. 12–Jan. 26 .....             | 3      | 9          |
| White-fronted Geese:                 |                                   |        |            |
| North Zone .....                     | Same as for Canada Geese .....    | 6      | 18         |
| South Zone .....                     | Same as for Canada Geese .....    | 6      | 18         |
| Light Geese:                         |                                   |        |            |
| North Zone .....                     | Same as for Canada Geese .....    | 20     | 60         |
| South Zone .....                     | Same as for Canada Geese .....    | 20     | 60         |
| <i>Oregon</i>                        |                                   |        |            |
| Ducks: .....                         |                                   | 7      | 21         |
| Zone 1:                              |                                   |        |            |
| Columbia Basin Unit:                 |                                   |        |            |
| Scaup .....                          | Nov. 2–Jan. 26 .....              | 3      | 9          |
| Other Ducks .....                    | Oct. 12–Oct. 20 & .....           | 7      | 21         |
|                                      | Oct. 23–Jan. 26 .....             | 7      | 21         |
| Rest of Zone 1 .....                 | Same as Columbia Basin Unit ..... |        |            |
| Zone 2:                              |                                   |        |            |
| Scaup .....                          | Oct. 5–Dec. 1 & .....             | 3      | 9          |
|                                      | Dec. 4–Dec. 31 .....              | 3      | 9          |
| Other Ducks .....                    | Oct. 5–Dec. 1 & .....             | 7      | 21         |
|                                      | Dec. 4–Jan. 19 .....              | 7      | 21         |
| Coots .....                          | Same as for Other Ducks .....     | 25     | 75         |
| Canada Geese (3):                    |                                   |        |            |

|   | Season dates                          | Limits |            |
|---|---------------------------------------|--------|------------|
|   |                                       | Bag    | Possession |
| Northwest General Goose Zone (10) .....           | Nov. 2–Nov. 10 & .....                | 4      | 12         |
|   | Nov. 23–Jan. 12 & .....               | 4      | 12         |
|   | Feb. 1–Mar. 10 .....                  | 4      | 12         |
| Northwest Special Permit Zone (10) (11)(12) ..... | Nov. 2–Nov. 10 & .....                | 4      | 12         |
|   | Nov. 23–Jan. 12 & .....               | 4      | 12         |
|   | Feb. 1–Mar. 10 .....                  | 4      | 12         |
| Southwest General Zone .....                      | Oct. 12–Dec. 1 & .....                | 4      | 12         |
|   | Dec. 9–Jan. 26 .....                  | 4      | 12         |
| South Coast Zone .....                            | Sept. 28–Dec. 1 & .....               | 4      | 12         |
|   | Dec. 21–Jan. 12 & .....               | 4      | 12         |
|   | Feb. 22–Mar. 10 .....                 | 6      | 18         |
| Harney and Lake County Zone .....                 | Oct. 5–Dec. 1 & .....                 | 4      | 12         |
|   | Dec. 16–Jan. 26 .....                 | 4      | 12         |
| Malheur County Zone .....                         | Oct. 5–Dec. 1 & .....                 | 4      | 12         |
|   | Dec. 16–Jan. 26 .....                 | 4      | 12         |
| Klamath County Zone .....                         | Oct. 5–Dec. 1 & .....                 | 4      | 12         |
|   | Dec. 16–Jan. 26 .....                 | 4      | 12         |
| Eastern Zone .....                                | Oct. 12–Oct. 20 & .....               | 4      | 12         |
|   | Oct. 28–Jan. 26 .....                 | 4      | 12         |
| Tillamook County (10)(11)(12) .....               | Nov. 2–Nov. 10 & .....                | 4      | 12         |
|   | Nov. 23–Jan. 12 & .....               | 4      | 12         |
|   | Feb. 1–Mar. 10 .....                  | 4      | 12         |
| White-fronted Geese:                              |                                       |        |            |
| Northwest General Goose Zone .....                | Same as for Canada Geese .....        | 6      | 18         |
| Northwest Special Permit Zone (9) .....           | Same as for Canada Geese .....        | 6      | 18         |
| Southwest General Zone .....                      | Same as for Canada Geese .....        | 6      | 18         |
| South Coast Zone .....                            | Same as for Canada Geese .....        | 6      | 18         |
| Harney and Lake County Zone:                      |                                       |        |            |
| Lake County .....                                 | Same as for Canada Geese .....        | 1      | 3          |
| Rest of Zone .....                                | Same as for Canada Geese .....        | 6      | 18         |
| Malheur County Zone .....                         | Same as for Canada Geese .....        | 6      | 18         |
| Klamath County Zone .....                         | Oct. 5–Dec. 1 & .....                 | 6      | 18         |
|   | Jan. 23–Mar. 10 .....                 | 6      | 18         |
| Eastern Zone .....                                | Same as for Canada Geese .....        | 6      | 18         |
| Tillamook County (9) .....                        | Same as for Canada Geese .....        | 6      | 18         |
| Light Geese:                                      |                                       |        |            |
| Northwest General Goose Zone .....                | Same as for Canada Geese .....        | 6      | 18         |
| Northwest Special Permit Zone (9) .....           | Same as for Canada Geese .....        | 4      | 12         |
| Southwest General Zone .....                      | Same as for Canada Geese .....        | 6      | 18         |
| South Coast Zone .....                            | Same as for Canada Geese .....        | 6      | 18         |
| Harney and Lake County Zone .....                 | Same as for Canada Geese .....        | 6      | 18         |
| Malheur County Zone .....                         | Same as for Canada Geese .....        | 20     | 60         |
| Klamath County Zone .....                         | Same as for White-fronted Geese ..... | 6      | 18         |
| Eastern Zone .....                                | Same as for Canada Geese .....        | 6      | 18         |
| Tillamook County (9) .....                        | Same as for Canada Geese .....        | 6      | 18         |
| Brant .....                                       | Nov. 16–Dec. 1 .....                  | 2      | 6          |
| Utah (13)   |                                       |        |            |
| Ducks .....                                       |                                       | 7      | 21         |
| Zone 1:   |                                       |        |            |
| Scaup .....                                       | Oct. 5–Dec. 29 .....                  | 3      | 9          |
| Other Ducks .....                                 | Oct. 5–Jan. 18 .....                  | 7      | 21         |
| Zone 2:   |                                       |        |            |
| Scaup .....                                       | Same as Zone 1 .....                  | 3      | 9          |
| Other Ducks .....                                 | Same as Zone 1 .....                  | 7      | 21         |
| Coots .....                                       | Same as for Other Ducks .....         | 25     | 75         |
| Canada Geese and Brant:                           |                                       |        |            |
| North Zone .....                                  | Oct. 5–Jan. 18 .....                  | 3      | 9          |
| Wasatch Front Zone .....                          | Oct. 5–Oct. 17 & .....                | 3      | 9          |
|   | Nov. 2–Feb. 2 .....                   | 3      | 9          |
| Washington County Zone .....                      | Oct. 5–Oct. 17 & .....                | 3      | 9          |
|   | Nov. 2–Feb. 2 .....                   | 3      | 9          |
| Rest of State Zone .....                          | Oct. 5–Oct. 17 & .....                | 3      | 9          |
|   | Oct. 26–Jan. 26 .....                 | 3      | 9          |
| White-fronted Geese:                              |                                       |        |            |
| North Zone .....                                  | Same as for Canada Geese .....        | 6      | 18         |
| Wasatch Front Zone .....                          | Same as for Canada Geese .....        | 6      | 18         |
| Washington County Zone .....                      | Same as for Canada Geese .....        | 6      | 18         |
| Rest of State Zone .....                          | Same as for Canada Geese .....        | 6      | 18         |
| Light Geese:                                      |                                       |        |            |
| North Zone .....                                  | Oct. 25–Jan. 18 & .....               | 20     | 60         |
|   | Feb. 18–Mar. 10 .....                 | 20     | 60         |
| Wasatch Front Zone .....                          | Same as for North Zone .....          | 20     | 60         |

|  | Season dates                   | Limits |            |
|--|--------------------------------|--------|------------|
|  |                                | Bag    | Possession |
| Washington County Zone .....             | Same as for North Zone .....   | 20     | 60         |
| Rest of State Zone .....                 | Oct. 22–Jan. 26 & .....        | 20     | 60         |
|  | Mar. 1–Mar. 10 .....           | 20     | 60         |
| <i>Washington</i>                        |                                |        |            |
| Ducks: .....                             |                                | 7      | 21         |
| East Zone:                               |                                |        |            |
| Scaup .....                              | Nov. 2–Jan. 26 .....           | 3      | 9          |
| Other Ducks .....                        | Oct. 12–Oct. 16 & .....        | 7      | 21         |
|  | Oct. 19–Jan. 26 .....          | 7      | 21         |
| West Zone (14) .....                     | Same as East Zone .....        |        |            |
| Coots .....                              | Same as for Other Ducks .....  | 25     | 75         |
| Canada Geese:                            |                                |        |            |
| Management Area 1 (15): .....            | Oct. 12–Oct. 24 & .....        | 4      | 12         |
|  | Nov. 2–Jan. 26 .....           | 4      | 12         |
| Management Area 2A (16) (17) (18): ..... | Nov. 9–Nov. 27 & .....         | 4      | 12         |
|  | Nov. 30–Dec. 1 & .....         | 4      | 12         |
|  | Dec. 11–Jan. 26 & .....        | 4      | 12         |
|  | Feb. 2–Mar. 6 .....            | 4      | 12         |
| Management Area 2B (16) (17) (18): ..... | Oct. 12–Oct. 23 & .....        | 4      | 12         |
|  | Nov. 2–Jan. 18 .....           | 4      | 12         |
| Management Areas 3 (15) .....            | Oct. 12–Oct. 24 & .....        | 4      | 12         |
|  | Nov. 2–Jan. 18 .....           | 4      | 12         |
| Management Area 4 (15) .....             | Oct. 12–Oct. 13 & .....        | 4      | 12         |
|  | Oct. 16 & .....                | 4      | 12         |
|  | Oct. 19–Jan. 26 .....          | 4      | 12         |
| Management Area 5 (15) .....             | Oct. 12–Oct. 14 & .....        | 4      | 12         |
|  | Oct. 19–Jan. 26 .....          | 4      | 12         |
| White-fronted Geese:                     |                                |        |            |
| Management Area 1 (15) .....             | Same as for Canada Geese ..... | 4      | 12         |
| Management Area 2A (16) .....            | Same as for Canada Geese ..... | 4      | 12         |
| Management Area 2B (16) .....            | Same as for Canada Geese ..... | 4      | 12         |
| Management Areas 3 (15) .....            | Same as for Canada Geese ..... | 4      | 12         |
| Management Area 4 (15) .....             | Same as for Canada Geese ..... | 4      | 12         |
| Management Area 5 (15) .....             | Same as for Canada Geese ..... | 4      | 12         |
| Light Geese:                             |                                |        |            |
| Management Area 1 (15) .....             | Same as for Canada Geese ..... | 4      | 12         |
| Management Area 2A (16) .....            | Same as for Canada Geese ..... | 4      | 12         |
| Management Area 2B (16) .....            | Same as for Canada Geese ..... | 4      | 12         |
| Management Areas 3 (15) .....            | Same as for Canada Geese ..... | 4      | 12         |
| Management Area 4 (15) .....             | Same as for Canada Geese ..... | 4      | 12         |
| Management Area 5 (15) .....             | Same as for Canada Geese ..... | 4      | 12         |
| Brant (19):                              |                                |        |            |
| Skagit County .....                      | Jan. 11–Jan. 26 .....          | 2      | 6          |
| Pacific County .....                     | Jan. 4–Jan. 19 .....           | 2      | 6          |
| <i>Wyoming</i>                           |                                |        |            |
| Ducks .....                              |                                | 7      | 21         |
| Snake River Zone:                        |                                |        |            |
| Scaup .....                              | Sept. 21–Dec. 15 .....         | 3      | 9          |
| Other Ducks .....                        | Sept. 21–Jan. 3 .....          | 7      | 21         |
| Balance of State Zone:                   |                                |        |            |
| Scaup .....                              | Sept. 21–Dec. 15 .....         | 3      | 9          |
| Other Ducks .....                        | Sept. 21–Jan. 3 .....          | 7      | 21         |
| Coots .....                              | Same as for Other Ducks .....  | 15     | 45         |
| Canada Geese and Brant .....             | Sept. 21–Dec. 26 .....         | 3      | 9          |
| White-fronted Geese .....                | Same as for Canada Geese ..... | 3      | 9          |
| Light Geese .....                        | Closed .....                   |        |            |

(1) In *Arizona*, the daily limit may include no more than either 2 hen mallards or 2 Mexican-like ducks, or 1 of each; and not more than 4 hen mallards and Mexican-like ducks, in the aggregate, may be in possession.

(2) In *California* and *Oregon*, small Canada geese are Cackling and Aleutian Canada geese.

(3) In *California*, large Canada geese are Western and Lesser Canada geese.

(4) In *California*, in the Northeastern Zone, the daily bag limit may include no more than 2 large Canada geese.

(5) In *California*, in the Southern Zone, the daily bag limit for Canada geese and white-fronted geese is an aggregate bag limit.

(6) In *Idaho*, the season on light geese is closed in Fremont and Teton Counties.

(7) In *Montana*, check State regulations for special seasons/exceptions in Freezeout Lake WMA; Canyon Ferry; Flathead; Deer Lodge County; and Missoula County.

(8) In *Nevada*, in the South Zone, the open season for all ducks, coots, moorhens, brant, and geese in the Clarke County portion of the South Zone is only November 2 to January 26.

(9) In *Nevada*, there is no open season on light geese in Ruby Valley within Elko and White Pine Counties. In addition, the season is closed in Kirch WMA, Mason Valley WMA, and Scripps WMA/Washoe State Park from February 10 to February 28.

(10) In *Oregon*, in the Northwest General Zone, the Northwest Special Permit Zone, and the Tillamook County Zone, the daily bag limit for Canada geese may not include more than 3 Cackling or Aleutian Canada geese.

(11) In *Oregon*, the Northwest Special Permit Zone is closed to all goose hunting, except for designated areas. See State regulations for specific boundary descriptions, times, days, and other conditions of the special permit season.

- (12) In *Oregon*, in the Northwest Special Permit Zone and the Tillamook County Zone, the bag limit for Dusky Canada geese is 1 per season.
- (13) In *Utah*, the shooting hours are 7:30 a.m. to sunset on October 6 in Cache, Salt Lake, Davis, Weber, and Box Elder Counties.
- (14) In *Washington*, the daily bag limit in the West Zone may include no more than 2 scoters, 2 long-tailed ducks, and 2 goldeneyes, with the possession limit three times the daily bag limit. The daily bag and possession limit, and the season limit, for harlequins is 1.
- (15) In *Washington*, in State Goose Area 4, hunting is allowed only on Saturdays, Sundays, Wednesdays, and certain holidays. In State Goose Areas 1, 3, and 5, hunting is allowed everyday. See State regulations for details, including shooting hours.
- (16) In *Washington*, see State regulations for specific dates and conditions of permit hunts and closures for Canada geese.
- (17) In *Washington*, in Management Area 2A, the daily bag limit for Canada geese may not include more than 3 Cackling Canada geese. In Management Area 2B, the daily bag limit for Canada geese may not include more than 3 Cackling and 1 Aleutian Canada geese.
- (18) In *Washington*, in Management Area 2A and 2B, the bag limit for Dusky Canada geese is 1 per season.
- (19) In *Washington*, brant may be hunted in Skagit and Pacific Counties only; see State regulations for specific dates.
- (f) *Youth Waterfowl Hunting Days*.

The following seasons are open only to youth hunters. Youth hunters must be accompanied into the field by an adult at least 18 years of age. This adult cannot duck hunt but may participate in other open seasons.

**Definition**

Youth Hunters: Includes youths 15 years of age or younger.

**Note:** The following seasons are in addition to the seasons published previously in the August 28, 2013, **Federal Register** (78 FR 53200). Bag and possession limits will conform to those set for the regular season.

|                              |   |         | Season Dates       |
|------------------------------|---|---------|--------------------|
| <b>ATLANTIC FLYWAY</b>       |   |         |                    |
| <i>Connecticut</i> .....     | Ducks, geese, mergansers, and coots .....                                     |         | Oct. 5 & Nov. 2.   |
| * .....                      | * .....   | * ..... | * .....            |
| <i>Florida</i> .....         | Ducks, mergansers, coots, moorhens, and geese .....                           |         | Feb. 1 & 2.        |
| * .....                      | * .....   | * ..... | * .....            |
| <i>Maryland</i> (1)(8) ..... | Ducks, coots, snow geese, Canada geese, sea ducks, and brant .....            |         | Nov. 2 & Feb. 8.   |
| <i>Massachusetts</i> .....   | Ducks, mergansers, coots, and geese .....                                     |         | Oct. 5 & Oct. 12.  |
| <i>New Jersey</i> .....      | Ducks, geese, mergansers, coots, moorhens, and gallinules.                    |         |                    |
| North Zone .....             | .....   |         | Oct. 5 & Nov. 2.   |
| South Zone .....             | .....   |         | Oct. 12 & Nov. 9.  |
| Coastal Zone .....           | .....   |         | Oct. 26 & Nov. 16. |
| * .....                      | * .....   | * ..... | * .....            |
| <i>North Carolina</i> .....  | Ducks, mergansers, Canada geese (9), tundra swans (10), and coots .....       |         | Feb. 1 & 8.        |
| * .....                      | * .....   | * ..... | * .....            |
| <i>South Carolina</i> .....  | Ducks, geese, mergansers, and coots .....                                     |         | Nov. 16 & Feb. 1.  |
| * .....                      | * .....   | * ..... | * .....            |
| <i>Virginia</i> .....        | Ducks, mergansers, coots, moorhens, tundra swans (10), and Canada geese (11). |         | Oct. 26 & Feb. 1.  |
| * .....                      | * .....   | * ..... | * .....            |
| <b>MISSISSIPPI FLYWAY</b>    |   |         |                    |
| * .....                      | * .....   | * ..... | * .....            |
| <i>Arkansas</i> .....        | Ducks, geese, mergansers, coots, moorhens, and gallinules .....               |         | Feb. 1 & 2.        |
| <i>Illinois</i> .....        | Ducks, geese, mergansers, and coots.  |         |                    |
| North Zone .....             | .....   |         | Oct. 12 & 13.      |
| Central Zone .....           | .....   |         | Oct. 19 & 20.      |
| South Central Zone .....     | .....   |         | Nov. 2 & 3.        |
| South Zone .....             | .....   |         | Nov. 16 & 17       |
| <i>Indiana</i> .....         | Ducks, mergansers, coots, moorhens, gallinules, and geese:                    |         |                    |
| North Zone .....             | .....   |         | Oct. 12 & 13.      |
| Central Zone .....           | .....   |         | Oct. 19 & 20.      |
| South Zone .....             | .....   |         | Oct. 26 & 27.      |
| <i>Iowa</i> .....            | Ducks, geese, mergansers, coots.  |         |                    |
| North Zone .....             | .....   |         | Oct. 5 & 6.        |
| Missouri River Zone .....    | .....   |         | Oct. 19 & 20.      |
| South Zone .....             | .....   |         | Oct. 12 & 13.      |
| <i>Kentucky</i> .....        | Ducks, geese, mergansers, coots, moorhens, and gallinules:                    |         |                    |
| West Zone .....              | .....   |         | Feb. 1 & 2.        |
| East Zone .....              | .....   |         | Nov. 2 & 3.        |
| <i>Louisiana</i> .....       | Ducks, mergansers, coots, moorhens, gallinules, and geese:                    |         |                    |
| West Zone .....              | .....   |         | Nov. 9 & Jan. 25.  |
| East Zone .....              | .....   |         | Nov. 16 & Feb. 1.  |
| Coastal Zone .....           | .....   |         | Nov. 2 & 3.        |
| * .....                      | * .....   | * ..... | * .....            |
| <i>Mississippi</i> .....     | Ducks, mergansers, coots, moorhens, gallinules, and geese .....               |         | Nov. 16 & Feb. 1.  |
| <i>Missouri</i> .....        | Ducks, coots, mergansers, moorhens, gallinules, and geese:                    |         |                    |
| North Zone .....             | .....   |         | Oct. 19 & 20.      |
| Middle Zone .....            | .....   |         | Oct. 26 & 27.      |
| South Zone .....             | .....   |         | Nov. 23 & 24.      |
| <i>Ohio</i> .....            | Ducks, mergansers, coots, moorhens, gallinules, and geese:                    |         |                    |

|                                   |   |  |  |  |  | Season Dates       |
|-----------------------------------|---|--|--|--|--|--------------------|
| Lake Erie Marsh .....             |   |  |  |  |  | Oct. 5 & 6.        |
| North Zone .....                  |   |  |  |  |  | Oct. 5 & 6.        |
| South Zone .....                  |   |  |  |  |  | Oct. 5 & 6.        |
| Tennessee .....                   | Ducks, mergansers, coots, moorhens, gallinules, and geese:        |  |  |  |  |                    |
| Reelfoot Zone .....               |   |  |  |  |  | Feb. 1 & 8.        |
| Remainder of State .....          |   |  |  |  |  | Feb. 1 & 8.        |
| * .....                           |   |  |  |  |  | *                  |
| CENTRAL FLYWAY                    |   |  |  |  |  |                    |
| * .....                           |   |  |  |  |  | *                  |
| Kansas (4) .....                  | Ducks, dark geese, mergansers, and coots:                         |  |  |  |  |                    |
| High Plains .....                 |   |  |  |  |  | Sept. 28 & 29.     |
| Low Plains:                       |   |  |  |  |  |                    |
| Early Zone .....                  |   |  |  |  |  | Sept. 28 & 29.     |
| Late Zone .....                   |   |  |  |  |  | Oct. 19 & 20.      |
| Southeast Zone .....              |   |  |  |  |  | Oct. 26 & 27.      |
| * .....                           |   |  |  |  |  | *                  |
| Nebraska .....                    | Ducks, geese, mergansers, and coots.                              |  |  |  |  |                    |
| Zone 1 .....                      |   |  |  |  |  | Oct. 5 & 6.        |
| Zone 2 .....                      |   |  |  |  |  | Sept. 28 & 29.     |
| Zone 3 .....                      |   |  |  |  |  | Oct. 19 & 20.      |
| Zone 4 .....                      |   |  |  |  |  | Sept. 28 & 29.     |
| Oklahoma .....                    | Ducks, mergansers, coots, and geese:                              |  |  |  |  |                    |
| High Plains .....                 |   |  |  |  |  | Oct. 5 & 6.        |
| Low Plains:                       |   |  |  |  |  |                    |
| Zone 1 .....                      |   |  |  |  |  | Oct. 12 & 13.      |
| Zone 2 .....                      |   |  |  |  |  | Oct. 19 & 20.      |
| * .....                           |   |  |  |  |  | *                  |
| Texas .....                       | Ducks, geese, mergansers, moorhens, gallinules, and coots:        |  |  |  |  |                    |
| High Plains .....                 |   |  |  |  |  | Oct. 19 & 20.      |
| Low Plains:                       |   |  |  |  |  |                    |
| North Zone .....                  |   |  |  |  |  | Oct. 26 & 27.      |
| South Zone .....                  |   |  |  |  |  | Oct. 26 & 27.      |
| * .....                           |   |  |  |  |  | *                  |
| PACIFIC FLYWAY                    |   |  |  |  |  |                    |
| Arizona .....                     | Ducks, geese, brant, mergansers, coots, moorhens, and gallinules. |  |  |  |  |                    |
| North Zone .....                  |   |  |  |  |  | Sept. 28 & 29.     |
| South Zone .....                  |   |  |  |  |  | Feb. 1 & 2.        |
| California .....                  | Ducks, geese, brant, mergansers, coots, moorhens, and gallinules. |  |  |  |  |                    |
| Northeastern Zone .....           |   |  |  |  |  | Sept. 21 & 22.     |
| Colorado River Zone .....         |   |  |  |  |  | Feb. 1 & 2.        |
| Southern Zone .....               |   |  |  |  |  | Feb. 1 & 2.        |
| Southern San Joaquin Valley ..... |   |  |  |  |  | Feb. 1 & 2.        |
| Balance-of-State Zone .....       |   |  |  |  |  | Feb. 1 & 2.        |
| * .....                           |   |  |  |  |  | *                  |
| Nevada .....                      | Ducks, geese, mergansers, coots, moorhens, and gallinules.        |  |  |  |  |                    |
| Northeast Zone .....              |   |  |  |  |  | Sept. 14 & 15.     |
| Northwest Zone .....              |   |  |  |  |  | Sept. 28 & Feb. 8. |
| * .....                           |   |  |  |  |  | *                  |
| South Zone .....                  |   |  |  |  |  | Feb. 8 & 9.        |
| * .....                           |   |  |  |  |  | *                  |

(1) In *Maryland*, youth hunter(s) must be accompanied by an adult at least 21 years old and who possesses a current *Maryland* hunting license or is exempt from the hunting license requirement. The adult accompanying the youth hunter(s) may not possess a hunting weapon and may not participate in other seasons that are open on the youth days.

(4) In *Kansas*, the adult accompanying the youth must possess any licenses and/or stamps required by law for that individual to hunt waterfowl.

(8) In *Maryland*, the bag limit for Canada geese is 2 in the AP Zone and 5 in the RP Zone.

(9) In *North Carolina*, the daily bag limit in the Northeast Hunt Zone may not include dark geese except by permit.

(10) In *North Carolina* and *Virginia*, the daily bag limit may not include tundra swans except by permit.

(11) In *Virginia*, the daily bag limit for Canada geese is 2.

■ 4. Section 20.106 is amended by:

■ a. Revising the introductory paragraphs;

■ b. Adding entries for the following States in alphabetical order to the table;

- c. Revising footnote (1) following the table; and  
 ■ d. Adding footnotes (6) and (7) following the table.

The revisions and additions read as follows:

**§ 20.106 Seasons, limits, and shooting hours for sandhill cranes.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset,

except as otherwise restricted by State regulations. Area descriptions were published in the August 23, 2013, **Federal Register** (78 FR 52658).

Federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take sandhill cranes at the level allowed by the permit, in accordance with provisions of both Federal and State regulations governing the hunting season. The permit must be carried by the permittee when exercising its provisions and must be presented to any law enforcement officer upon request.

The permit is not transferable or assignable to another individual, and may not be sold, bartered, traded, or otherwise provided to another person. If the permit is altered or defaced in any way, the permit becomes invalid.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

**Note:** The following seasons are in addition to the seasons published previously in the August 28, 2013, **Federal Register** (78 FR 53200).

|                       |                       | Season dates | Limits |            |
|-----------------------|-----------------------|--------------|--------|------------|
|                       |                       |              | Bag    | Possession |
| MISSISSIPPI FLYWAY    |                       |              |        |            |
| Kentucky (1)(6) ..... | Dec. 14–Jan. 12 ..... |              | 2      | 2          |
| Tennessee (7) .....   | Nov. 28–Jan. 1 .....  |              | 3      | 3          |
| *                     | *                     | *            | *      | *          |
| CENTRAL FLYWAY        |                       |              |        |            |
| *                     | *                     | *            | *      | *          |
| Oklahoma (1) .....    | Oct. 19–Jan. 19 ..... |              | 3      | 9          |
| *                     | *                     | *            | *      | *          |
| Texas (1):            |                       |              |        |            |
| Zone A .....          | Nov. 2–Feb. 2 .....   |              | 3      | 9          |
| Zone B .....          | Nov. 22–Feb. 2 .....  |              | 3      | 9          |
| Zone C .....          | Dec. 21–Jan. 26 ..... |              | 2      | 6          |
| *                     | *                     | *            | *      | *          |

(1) Each person participating in the regular sandhill crane seasons must have a valid sandhill crane hunting permit and/or a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting in their possession while hunting.

(6) In *Kentucky*, the season limit is 2 cranes. If the harvest objective of 400 cranes is obtained before the season ending date, the season will close.

(7) In *Tennessee*, the shooting hours are from sunrise to 3 p.m.

- 5. Section 20.107 is revised to read as follows:

**§ 20.107 Seasons, limits, and shooting hours for swans.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting hours are one-half hour before sunrise until sunset, except as otherwise restricted by State

regulations. Hunting is by State permit only.

Federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take swans at the level allowed by the permit, in accordance with provisions of both Federal and State regulations governing the hunting season. The permit must be carried by the permittee when exercising its provisions and must be presented to any law enforcement officer upon request. The permit is not transferable or assignable to another

individual, and may not be sold, bartered, traded, or otherwise provided to another person. If the permit is altered or defaced in any way, the permit becomes invalid.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

**Note:** Successful permittees must immediately validate their harvest by that method required in State regulations.

|                             |                        | Season dates | Limits                    |
|-----------------------------|------------------------|--------------|---------------------------|
| <b>ATLANTIC FLYWAY</b>      |                        |              |                           |
| <i>North Carolina</i> ..... | Nov. 9–Jan. 31 .....   |              | 1 tundra swan per season. |
| <i>Virginia</i> .....       | Dec. 2–Jan. 31 .....   |              | 1 tundra swan per season. |
| <b>CENTRAL FLYWAY (1)</b>   |                        |              |                           |
| <i>Montana</i> .....        | Sept. 28–Jan. 2 .....  |              | 1 tundra swan per season. |
| <i>North Dakota</i> .....   | Sept. 28–Dec. 29 ..... |              | 1 tundra swan per season. |

|                              | Season dates           | Limits                    |
|------------------------------|------------------------|---------------------------|
| <i>South Dakota</i> .....    | Sept. 28–Dec. 22 ..... | 1 tundra swan per permit. |
| <i>PACIFIC FLYWAY</i> (1)(2) |                        |                           |
| <i>Montana</i> (3) .....     | Oct. 12–Dec. 1 .....   | 1 swan per season.        |
| <i>Nevada</i> (4)(5) .....   | Oct. 12–Jan. 5 .....   | 2 swans per season.       |
| <i>Utah</i> (5)(6) .....     | Oct. 5–Dec. 8 .....    | 1 swan per season.        |

(1) See State regulations for description of area open to swan hunting.

(2) Any species of swan may be taken.

(3) In *Montana*, all harvested swans must be reported by way of a bill measurement card within 3 days of harvest.

(4) All harvested swans and tags must be checked or registered within 5 days of harvest.

(5) Harvests of trumpeter swans are limited to 5 in Nevada and 10 in Utah. When it has been determined that the quota of trumpeter swans allotted to Nevada and Utah will have been filled, the season for taking of any swan species in the respective State will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

(6) In *Utah*, all harvested swans and tags must be checked or registered within 3 days of harvest.

■ 6. Section 20.109 is amended by:

■ a. Revising the introductory paragraphs;

■ b. Adding entries for the following States in alphabetical order to the table; and

■ c. Adding footnotes (4), (5), (6), and (7) following the table.

The revisions and additions read as follows:

**§ 20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise restricted by State regulations.

Area descriptions were published in the August 22, 2013 (78 FR 52338) and August 23, 2013 (78 FR 52658) **Federal Registers**.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

Limits: The daily bag limit may include no more than 3 migratory game birds, singly or in the aggregate. The possession limit is three times the daily bag limit. These limits apply to falconry

during both regular hunting seasons and extended falconry seasons—unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas.

Although many States permit falconry during the gun seasons, only extended falconry seasons are shown below. Please consult State regulations for details.

**Note:** The following seasons are in addition to the seasons published previously in the August 28, 2013, **Federal Register** (78 FR 53200).

Extended falconry dates

**ATLANTIC FLYWAY**

*Delaware*

|                                    |         |         |         |         |         |                                   |
|------------------------------------|---------|---------|---------|---------|---------|-----------------------------------|
| * .....                            | * ..... | * ..... | * ..... | * ..... | * ..... | * .....                           |
| Ducks, mergansers, and coots ..... |         |         |         |         |         | Jan. 27–Mar. 1.                   |
| Brant .....                        |         |         |         |         |         | Nov. 25–Dec. 21 & Jan. 27–Mar. 1. |

*Florida*

|   |         |         |         |         |         |                                   |
|---|---------|---------|---------|---------|---------|-----------------------------------|
| * .....   | * ..... | * ..... | * ..... | * ..... | * ..... | * .....                           |
| Ducks, mergansers, light geese, and coots ..... |         |         |         |         |         | Oct. 30–Nov. 12 & Feb. 3–Feb. 28. |

*Georgia*

|  |  |  |  |  |  |                                  |
|--|--|--|--|--|--|----------------------------------|
| Ducks, moorhens, gallinules, and sea ducks ..... |  |  |  |  |  | Dec. 2–Dec. 6 & Jan. 27–Jan. 29. |
|--|--|--|--|--|--|----------------------------------|

*Maine*

|                                   |  |  |  |  |  |                 |
|-----------------------------------|--|--|--|--|--|-----------------|
| Ducks, mergansers, and coots (4): |  |  |  |  |  |                 |
| North Zone .....                  |  |  |  |  |  | Dec. 12–Feb. 1. |
| South & Coastal Zones .....       |  |  |  |  |  | Jan. 8–Feb. 28. |

*Maryland*

|                   |         |         |         |         |         |                  |
|-------------------|---------|---------|---------|---------|---------|------------------|
| * .....           | * ..... | * ..... | * ..... | * ..... | * ..... | * .....          |
| Ducks .....       |         |         |         |         |         | Jan. 31–Mar. 10. |
| Brant .....       |         |         |         |         |         | Jan. 26–Mar. 10. |
| Light Geese ..... |         |         |         |         |         | Feb. 16–Mar. 10. |

*Massachusetts*

|   |  |  |  |  |  |                         |
|---|--|--|--|--|--|-------------------------|
| Ducks, mergansers, sea ducks, and coots ..... |  |  |  |  |  | Oct. 5 & Feb. 1–Feb. 5. |
|---|--|--|--|--|--|-------------------------|

*New Hampshire*

|                               |  |  |  |  |  |                                   |
|-------------------------------|--|--|--|--|--|-----------------------------------|
| Ducks, mergansers, and coots: |  |  |  |  |  |                                   |
| Northern Zone .....           |  |  |  |  |  | Dec. 1–Jan. 14.                   |
| Inland Zone .....             |  |  |  |  |  | Nov. 4–Nov. 18 & Dec. 16–Jan. 14. |
| Coastal Zone .....            |  |  |  |  |  | Jan. 25–Mar. 10.                  |

*New Jersey*

|                  |  |  |  |  |  |                                   |
|------------------|--|--|--|--|--|-----------------------------------|
| Woodcock:        |  |  |  |  |  |                                   |
| North Zone ..... |  |  |  |  |  | Oct. 1–Oct. 18 & Nov. 25–Jan. 15. |

## Extended falconry dates

|                                      |  |
|--------------------------------------|--|
| South Zone .....                     | Oct. 1–Nov. 8 & Dec. 2–Dec. 18 & Jan. 2–Jan. 15.   |
| Ducks, mergansers, coots, and brant: |  |
| North Zone .....                     | Jan. 16–Mar. 8.                                    |
| South Zone .....                     | Jan. 17–Mar. 10.                                   |
| Coastal Zone .....                   | Jan. 27–Mar. 10.                                   |
| <i>New York</i>                      |  |
| Ducks, mergansers and coots:         |  |
| Long Island Zone .....               | Nov. 1–Nov. 27 & Jan. 27–Feb. 13.                  |
| Northeastern Zone .....              | Oct. 1–Oct. 4 & Oct. 14–Oct. 25 & Dec. 16–Jan. 13. |
| Southeastern Zone .....              | Oct. 1–Oct. 11 & Oct. 21–Nov. 16 & Jan. 7–Jan. 13. |
| Western Zone .....                   | Oct. 1–Oct. 25 & Dec. 9–Dec. 27 & Jan. 13.         |
| <i>North Carolina</i>                |  |
| * .....                              | Oct. 21–Nov. 2 & Jan. 27–Feb. 15.                  |
| <i>Pennsylvania</i>                  |  |
| * .....                              |  |
| Ducks, mergansers, and coots:        |  |
| North Zone .....                     | Dec. 2–Dec. 23 & Feb. 8–Mar. 10.                   |
| South Zone .....                     | Oct. 28–Nov. 14 & Feb. 5–Mar. 10.                  |
| Northwest Zone .....                 | Dec. 16–Dec. 26 & Jan. 29–Mar. 10.                 |
| Lake Erie Zone .....                 | Jan. 17–Mar. 10.                                   |
| Canada Geese:                        |  |
| SJBZ Zone .....                      | Mar. 1–Mar. 10.                                    |
| AP Zone .....                        | Jan. 28–Mar. 10.                                   |
| RP Zone .....                        | Mar. 4–Mar. 10.                                    |
| <i>South Carolina</i>                |  |
| Ducks, mergansers, and coots .....   | Nov. 1–Nov. 22 & Dec. 2–Dec. 6 & Jan. 27–Jan. 29.  |
| <i>Virginia</i>                      |  |
| * .....                              | Dec. 2–Dec. 6 & Jan. 27–Feb. 22.                   |
| Ducks, mergansers, and coots .....   |  |
| Canada Geese:                        |  |
| Eastern (AP) Zone .....              | Dec. 7–Dec. 17 & Jan. 30–Feb. 22.                  |
| Western (SJBZ) Zone .....            | Dec. 7–Dec. 13 & Feb. 17–Feb. 22.                  |
| Brant .....                          | Oct. 10–Dec. 21 & Jan. 27–Jan. 31.                 |
| <b>MISSISSIPPI FLYWAY</b>            |  |
| <i>Arkansas</i>                      |  |
| Ducks, mergansers, and coots .....   | Feb. 1–Feb. 15.                                    |
| <i>Illinois</i>                      |  |
| * .....                              | Feb. 10–Mar. 10.                                   |
| Ducks, mergansers, and coots .....   |  |
| <i>Indiana</i>                       |  |
| * .....                              |  |
| Ducks, mergansers, and coots:        |  |
| North Zone .....                     | Sept. 27–Sept. 30 & Feb. 14–Mar. 10.               |
| Central Zone .....                   | Oct. 19–Oct. 25 & Feb. 17–Mar. 10.                 |
| South Zone .....                     | Oct. 26–Nov. 1 & Feb. 17–Mar. 10.                  |
| <i>Iowa</i>                          |  |
| Ducks, mergansers, and coots:        |  |
| North Zone .....                     | Dec. 15–Jan. 28.                                   |
| Missouri River Zone .....            | Dec. 20–Feb. 2.                                    |
| South Zone .....                     | Dec. 15–Jan. 28.                                   |
| White-fronted Geese:                 |  |
| North Goose Zone .....               | Dec. 11–Jan. 12.                                   |
| Missouri River Zone .....            | Dec. 25–Jan. 17.                                   |
| South Goose Zone .....               | Dec. 18–Jan. 17.                                   |
| <i>Kentucky</i>                      |  |
| Ducks, mergansers, and coots .....   | Nov. 5–Nov. 27 & Jan. 27–Jan. 31.                  |
| Geese .....                          | Nov. 5–Nov. 27.                                    |
| <i>Louisiana</i>                     |  |
| * .....                              |  |
| Rails and moorhens:                  |  |
| West and East Zone .....             | Nov. 4–Nov. 8 & Jan. 2–Feb. 2.                     |
| Coastal Zone .....                   | Nov. 4–Nov. 8 & Jan. 2–Jan. 31.                    |

## Extended falconry dates

|  |   |   |
|--|---|---|
| Ducks:   |   |   |
| West Zone .....  | Nov. 4–Nov. 15 & Dec. 16–Dec. 20 & Jan. 20–Feb. 2.      |   |
| East Zone .....  | Nov. 4–Nov. 22 & Dec. 9–Dec. 13 & Jan. 27–Feb. 2.       |   |
| Coastal Zone .....                                       | Nov. 4–Nov. 8 & Dec. 2–Dec. 13 & Jan. 20–Jan. 31.       |   |
| <i>Michigan</i>  |   |   |
| Ducks, mergansers, coots, and moorhens .....             | Dec. 30–Feb. 2 & Mar. 1–Mar. 10.                        |   |
| <i>Minnesota</i>   |   |   |
| * .....  | *   | * |
| Ducks, mergansers, coots, moorhens, and gallinules ..... | Dec. 14–Jan. 28.  |   |
| <i>Mississippi</i>                                       |   |   |
| Doves .....  | Nov. 16–Nov. 24 & Jan. 15–Feb. 9.                       |   |
| Ducks, mergansers and coots .....                        | Feb. 8–Mar. 10.   |   |
| <i>Missouri</i>  |   |   |
| * .....  | *   | * |
| Ducks, mergansers, and coots .....                       | Sept. 7–Sept. 22 & Feb. 10–Mar. 10.                     |   |
| <i>Ohio</i>  |   |   |
| Ducks, mergansers, and coots .....                       | Sept. 1–Sept. 22 & Feb. 8–Mar. 2.                       |   |
| Geese .....  | Sept. 1–Sept. 22 & Feb. 8–Feb. 12.                      |   |
| * .....  | *   | * |
| <i>Wisconsin</i>   |   |   |
| Rails, snipe, moorhens, and gallinules:                  |   |   |
| North Duck Zone .....                                    | Sept. 1–Sept. 20 & Nov. 20–Dec. 16.                     |   |
| South Duck Zone .....                                    | Sept. 1–Sept. 27 & Oct. 7–Oct. 11 & Dec. 2–Dec. 16.     |   |
| Mississippi River Zone .....                             | Sept. 1–Sept. 20 & Sept. 30–Oct. 11 & Dec. 2–Dec. 16.   |   |
| Woodcock .....   | Sept. 1–Sept. 21 & Nov. 5–Dec. 16.                      |   |
| Ducks, mergansers, and coots .....                       | Sept. 14–Sept. 15 & Jan. 10–Feb. 23.                    |   |
| <b>CENTRAL FLYWAY</b>                                    |   |   |
| <i>Kansas</i>  |   |   |
| Ducks, mergansers, and coots:                            |   |   |
| Low Plains .....   | Feb. 24–Mar. 10.  |   |
| * .....  | *   | * |
| <i>Nebraska</i>  |   |   |
| Ducks, mergansers, and coots:                            |   |   |
| Zone 1 .....   | Sept. 7–Sept. 22 & Feb. 25–Mar. 10.                     |   |
| Zone 2:  |   |   |
| Low Plains .....   | Sept. 7–Sept. 22 & Feb. 25–Mar. 10.                     |   |
| High Plains .....  | Sept. 7–Sept. 15.                                       |   |
| Zone 3:  |   |   |
| Low Plains .....   | Sept. 7–Sept. 15 & Feb. 25–Mar. 10.                     |   |
| High Plains .....  | Sept. 7–Sept. 15.                                       |   |
| Zone 4 .....   | Sept. 7–Sept. 22 & Feb. 25–Mar. 10.                     |   |
| <i>New Mexico</i>  |   |   |
| * .....  | *   | * |
| Common Moorhens .....                                    | Dec. 7–Jan. 12.   |   |
| * .....  | *   | * |
| <i>Oklahoma</i>  |   |   |
| Ducks, mergansers, and coots:                            |   |   |
| Low Plains .....   | Feb. 17–Mar. 3.   |   |
| <i>South Dakota</i>                                      |   |   |
| Ducks, mergansers, and coots:                            |   |   |
| High Plains .....  | Sept. 1–Sept. 8.  |   |
| Low Plains:  |   |   |
| North Zone .....   | Sept. 1–Sept. 14 & Sept. 18–Sept. 22 & Dec. 11–Dec. 22. |   |
| Middle Zone .....  | Sept. 1–Sept. 14 & Sept. 16–Sept. 20 & Dec. 11–Dec. 22. |   |
| South Zone .....   | Sept. 1–Sept. 14 & Sept. 18–Oct. 4.                     |   |
| <i>Texas</i>   |   |   |
| * .....  | *   | * |
| Ducks, mergansers, and coots:                            |   |   |
| Low Plains .....   | Jan. 27–Feb. 10.  |   |
| <i>Wyoming</i>   |   |   |

## Extended falconry dates

|                |   |  |   |  |   |                                      |   |  |   |
|----------------|---|--|---|--|---|--------------------------------------|---|--|---|
|                | *   |  | * |  | * |                                      | * |  | * |
|                | Ducks, mergansers, and coots:                         |  |   |  |   |                                      |   |  |   |
|                | Zone C1 .....   |  |   |  |   | Sept. 28–Sept. 29 & Oct. 23–Oct. 30. |   |  |   |
|                | Zone C2 & C3 .....                                    |  |   |  |   | Sept. 14–Sept. 20 & Dec. 2–Dec. 4.   |   |  |   |
| PACIFIC FLYWAY |   |  |   |  |   |                                      |   |  |   |
| Arizona        |   |  |   |  |   |                                      |   |  |   |
|                | *   |  | * |  | * |                                      | * |  | * |
|                | Ducks and mergansers:                                 |  |   |  |   |                                      |   |  |   |
|                | North Zone .....                                      |  |   |  |   | Sept. 30–Oct. 3.                     |   |  |   |
|                | South Zone .....                                      |  |   |  |   | Jan. 27–Jan. 30.                     |   |  |   |
| California     |   |  |   |  |   |                                      |   |  |   |
|                | Ducks, mergansers, and coots:                         |  |   |  |   |                                      |   |  |   |
|                | Colorado River Zone .....                             |  |   |  |   | Jan. 27–Jan. 30.                     |   |  |   |
|                | Southern Zone .....                                   |  |   |  |   | Jan. 27–Jan. 31.                     |   |  |   |
|                | Southern San Joaquin Zone .....                       |  |   |  |   | Jan. 27–Jan. 29.                     |   |  |   |
|                | Canada Geese and White-fronted Geese:                 |  |   |  |   |                                      |   |  |   |
|                | Northeastern Zone .....                               |  |   |  |   | Jan. 13–Jan. 17.                     |   |  |   |
|                | Colorado River Zone .....                             |  |   |  |   | Same as for Ducks.                   |   |  |   |
|                | Southern Zone (5) .....                               |  |   |  |   | Same as for Ducks.                   |   |  |   |
|                | Balance-of-State Zone (6) .....                       |  |   |  |   | Same as for Ducks.                   |   |  |   |
|                | Brant:  |  |   |  |   |                                      |   |  |   |
|                | Northern Zone .....                                   |  |   |  |   | Oct. 19–Nov. 6 & Dec. 7–Jan. 31.     |   |  |   |
|                | Southern Zone .....                                   |  |   |  |   | Oct. 19–Nov. 8 & Dec. 9–Jan. 31.     |   |  |   |
|                | Light Geese:  |  |   |  |   |                                      |   |  |   |
|                | Northeastern Zone .....                               |  |   |  |   | Jan. 13–Jan. 17.                     |   |  |   |
|                | Colorado River Zone .....                             |  |   |  |   | Same as for Ducks.                   |   |  |   |
|                | Southern Zone (5) .....                               |  |   |  |   | Same as for Ducks.                   |   |  |   |
|                | Balance-of-State Zone (6) .....                       |  |   |  |   | Same as for Ducks.                   |   |  |   |
|                | *   |  | * |  | * |                                      | * |  | * |
| Nevada         |   |  |   |  |   |                                      |   |  |   |
|                | Ducks, mergansers, geese, coots, moorhens, and snipe: |  |   |  |   |                                      |   |  |   |
|                | Northeast Zone .....                                  |  |   |  |   | Sept. 21–Oct. 30 & Nov. 2–Jan. 5.    |   |  |   |
|                | Northwest and South Zones (7) .....                   |  |   |  |   | Oct. 12–Oct. 30 & Nov. 2–Jan. 26.    |   |  |   |

(4) In *Maine*, the daily bag and possession limits for black ducks are 1 and 3, respectively.

(5) In *California*, the falconry season for geese is concurrent with the regular season for white geese in the Imperial County special management area.

(6) In *California*, the falconry season for geese is concurrent with the regular season for small Canada geese in Del Norte and Humboldt counties.

(7) In *Nevada*, in the South Zone, in the portion of Clark County that includes the Moapa Valley, the falconry season is only open November 2 to January 26.

[FR Doc. 2013–22862 Filed 9–20–13; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

[Docket No. FWS–HQ–MB–2013–0057;  
FF09M21200–134–FXMB1231099BPP0]

RIN 1018–AY87

#### Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2013–14 Late Season

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule prescribes special late-season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This rule responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

**DATES:** This rule takes effect on September 21, 2013.

**ADDRESSES:** You may inspect comments received on the proposed special hunting regulations and tribal proposals during normal business hours in room 4107, Arlington Square Building, 4501

N. Fairfax Drive, Arlington, VA, or at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street NW., Washington, DC 20240; (703) 358–1714.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted,

captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

In the August 2, 2013, **Federal Register** (78 FR 47136), we proposed special migratory bird hunting regulations for the 2013–14 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the April 9, 2013, **Federal Register** (78 FR 21200), we requested that tribes desiring special hunting regulations in the 2013–14 hunting season submit a proposal including details on:

(1) Harvest anticipated under the requested regulations;

(2) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(3) Steps that would be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(4) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

Although the August 2 proposed rule included generalized regulations for

both early- and late-season hunting, this rulemaking addresses only the late-season proposals. Early-season proposals were addressed in a final rule published in the August 28, 2013, **Federal Register** (78 FR 53218). As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about September 24 or later each year and have a primary emphasis on waterfowl. All the regulations contained in this final rule were either submitted by the tribes or approved by the tribes and follow our proposals in the August 2 proposed rule.

#### **Status of Populations**

Information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds, including detailed information on methodologies and results, is available at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at [http://www.fws.gov/migratory\\_birds/NewsPublicationsReports.html](http://www.fws.gov/migratory_birds/NewsPublicationsReports.html).

#### **Comments and Issues Concerning Tribal Proposals**

For the 2013–14 migratory bird hunting season, we proposed regulations for 30 tribes or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements.

However, as noted earlier, only those with late-season proposals are included in this final rulemaking; 13 tribes have proposals with late seasons. We also noted in the August 2 proposed rule (78 FR 47136) that we were proposing seasons for three Tribes who have submitted proposals in past years but from whom we had not yet received proposals this year. We did not receive proposals from the three Tribes and, therefore, have not included them in this final rule.

The comment period for the August 2 proposed rule closed on August 12, 2013. We received two comments on our August 2, 2013, proposed rule, which announced proposed seasons for migratory bird hunting by American Indian Tribes, which we responded to in our August 28, 2013, final rule.

#### **National Environmental Policy Act (NEPA)**

The programmatic document, “Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations

Permitting the Sport Hunting of Migratory Birds (EIS 20130139),” filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being “Duck Hunting Regulations for 2013–14,” with its corresponding August 19, 2013, finding of no significant impact. In addition, an August 1985 environmental assessment entitled “Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands” is available from the address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

#### **Endangered Species Act Consideration**

Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), provides that, “The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act” (and) shall “insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. . . .” Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

#### **Regulatory Planning and Review (Executive Orders 12866 and 13563)**

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant

rules. OIRA has reviewed this rule and has determined that this rule is significant because it would have an annual effect of \$100 million or more on the economy.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

An economic analysis was prepared for the 2013–14 season. This analysis was based on data from the 2011 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in **Regulatory Flexibility Act** section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) issue restrictive regulations allowing fewer days than those issued during the 2012–13 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2012–13 season. For the 2013–14 season, we chose Alternative 3, with an estimated consumer surplus across all flyways of \$317.8–\$416.8 million. We also chose alternative 3 for the 2009–10, the 2010–11, the 2011–12, and the 2012–13 seasons. The 2013–14 analysis is part of the record for this rule and is available at <http://www.regulations.gov> at Docket No. FWS-HQ-MB-2013-0057.

#### Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which

was subsequently updated in 1996, 1998, 2004, 2008, and 2013. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2013 Analysis was based on the 2011 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately \$1.5 billion at small businesses in 2013. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**) or from our Web site at <http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs> or at <http://www.regulations.gov> at Docket No. FWS-HQ-MB-2013-0057.

#### Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule will have an annual effect on the economy of \$100 million or more. However, because this rule establishes hunting seasons, we are not deferring the effective date under the exemption contained in 5 U.S.C. 808(1).

#### Paperwork Reduction Act

This final rule does not contain any new information collection that requires approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has reviewed and approved the information collection requirements associated with migratory bird surveys and assigned the following OMB control numbers:

- 1018-0010—Mourning Dove Call Count Survey (expires 4/30/2015).
- 1018-0019—North American Woodcock Singing Ground Survey (expire 4/30/2015).
- 1018-0023—Migratory Bird Surveys (expires 4/30/2014). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.

#### Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking

will not impose a cost of \$100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

#### Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

#### Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act (16 U.S.C. 703–711), does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule allows hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

#### Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

#### Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 9 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2013–14 migratory bird hunting season. The resulting proposals were contained in a separate August 2, 2013, proposed rule (78 FR 47136). By virtue of these actions, we have consulted with Tribes affected by this rule.

## Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

## Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States and Tribes would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that “good cause” exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these seasons will, therefore, take effect less than 30 days after the date of publication.

Accordingly, with each participating Tribe having had an opportunity to participate in selecting the hunting

seasons desired for its reservation or ceded territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

## List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

## Regulations Promulgation

Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

## PART 20—[AMENDED]

- 1. The authority citation for part 20 continues to read as follows:

**Authority:** Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j; Pub. L. 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

**Note:** The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature.

- 2. Amend § 20.110 by revising paragraphs (a), (b), (f), (g), (l), (o), (p), (s), (w), (x), (z), (aa), and (cc) to read as set forth. (Current § 20.110 was published at 78 FR 53218, August 28, 2013.)

## § 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands

(a) *Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Nontribal Hunters)*

### Doves

**Season Dates:** Open September 1 through 15, 2013; then open November 9 through December 23, 2013.

**Daily Bag and Possession Limits:** For the early season, daily bag limit is 10 mourning or white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits after the first day of the season.

### Ducks (Including Mergansers)

**Season Dates:** Open October 12, 2013, through January 26, 2014.

**Daily Bag and Possession Limits:** Seven ducks, including two hen mallards, two redheads, two Mexican ducks, two goldeneye, two cinnamon

teal, three scaup, one canvasback, and one pintail. The possession limit is twice the daily bag limit.

### Coots and Common Moorhens

**Season Dates:** Same as ducks.

**Daily Bag and Possession Limits:** 25 coots and common moorhens, singly or in the aggregate. The possession limit is twice the daily bag limit.

### Geese

**Season Dates:** Open October 13, 2013, through January 20, 2014.

**Daily Bag and Possession Limits:** Three geese, including no more than three dark (Canada) geese and three white (snow, blue, Ross's) geese. The possession limit is six dark geese and six white geese.

**General Conditions:** All persons 14 years and older must be in possession of a valid Colorado River Indian Reservation hunting permit before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona. The early season will be open from one-half hour before sunrise until noon. For the late season, shooting hours are from one-half hour before sunrise to sunset.

(b) *Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal Members and Nontribal Hunters)*

### Tribal Members Only

#### Ducks (Including Mergansers)

**Season Dates:** Open September 2, 2013, through March 9, 2014.

**Daily Bag and Possession Limits:** The Tribe does not have specific bag and possession restrictions for Tribal members. The season on harlequin duck is closed.

### Coots

**Season Dates:** Same as ducks.

**Daily Bag and Possession Limits:** Same as ducks.

### Geese

**Season Dates:** Same as ducks.

**Daily Bag and Possession Limits:** Same as ducks.

### Nontribal Hunters

#### Ducks (Including Mergansers)

**Season Dates:** Open September 28, 2013, through January 5, 2014, and January 10, 2014 through January 14, 2014.

**Scaup**

*Season Dates:* September 28, 2013, through December 22, 2013.

*Daily Bag and Possession Limits:* Seven ducks, including no more than two hen mallards, two pintail, three scaup (when open), two canvasback, and two redheads. The possession limit is twice the daily bag limit.

**Coots**

*Season Dates:* Same as ducks.

*Daily Bag and Possession Limits:* The daily bag and possession limit is 25.

**Geese****Dark Geese**

*Season Dates:* Open September 28, 2013, through January 5, 2014, and January 10, 2014 through January 14, 2014.

*Daily Bag and Possession Limits:* Four and eight geese, respectively.

**Light Geese**

*Season Dates:* Open September 28, 2013, through January 5, 2014, and January 10, 2014 through January 14, 2014.

*Daily Bag and Possession Limits:* 20 and 40 geese, respectively.

**Youth Waterfowl Hunt**

*Season Dates:* September 21–22, 2013.

*Daily Bag and Possession Limits:* Same as ducks.

*General Conditions:* Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are sunrise to sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

\* \* \* \* \*

(f) *Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters)*

**Ducks (Including Mergansers)**

*Season Dates:* Open October 12 through November 30, 2013.

*Daily Bag and Possession Limits:* The daily bag limit is seven, including no more than two hen mallards, two pintail, two redheads, two canvasback, and three scaup. The possession limit is twice the daily bag limit.

**Canada Geese**

*Season Dates:* Open October 12 through November 30, 2013.

*Daily Bag and Possession Limits:* Two and four, respectively.

*General Conditions:* Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Jicarilla Tribe also apply on the reservation.

(g) *Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)*

**Nontribal Hunters on Reservation****Ducks**

*Duck Season Dates:* Open September 21, through September 23, 2013, and open September 28 through September 30, 2013, and open October 1, 2013, through January 31, 2014. During this period, days to be hunted are specified by the Kalispel Tribe as weekends, holidays, and for a continuous period in the months of October and November, not to exceed 107 days total. Nontribal hunters should contact the Tribe for more detail on hunting days.

*Daily Bag and Possession Limits:* Seven ducks, including no more than two female mallards, two pintail, two canvasback, three scaup (when open), and two redheads. The possession limit is twice the daily bag limit.

**Geese**

*Season Dates:* Open September 7 through September 15, 2013, for the early-season, and open October 1, 2013, through January 31, 2014, for the late-season. During this period, days to be hunted are specified by the Kalispel Tribe. Nontribal hunters should contact the Tribe for more detail on hunting days.

*Daily Bag and Possession Limits:* 5 Canada geese for the early season, and 6 light geese and 4 dark geese, for the late season. The daily bag limit is 2 brant (when the State's season is open) and is in addition to dark goose limits for the late season. The possession limit is twice the daily bag limit.

**Tribal Hunters Within Kalispel Ceded Lands****Ducks**

*Season Dates:* Open October 1, 2013, through January 31, 2014.

*Daily Bag and Possession Limits:* 7 ducks, including no more than 2 female mallards, 2 pintail, 2 canvasback, 3

scaup, and 2 redheads. The possession limit is twice the daily bag limit.

**Geese**

*Season Dates:* Open September 1, 2013, through January 31, 2014.

*Daily Bag Limit:* 6 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits.

*General Conditions:* Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit.

\* \* \* \* \*

(l) *Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters)*

**Tribal Hunters****Ducks, Mergansers, and Coots**

*Season Dates:* Open September 1, 2013, through March 10, 2014.

*Daily Bag and Possession Limits:* Six ducks, including no more five mallards (only two of which may be hens), four scaup, one mottled duck, two redheads, three wood ducks, one canvasback, and two pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than two hooded mergansers. The possession limit is twice the daily bag limit.

**Canada Geese**

*Season Dates:* Open September 1, 2013, through March 10, 2014.

*Daily Bag and Possession Limits:* Three and six, respectively.

**White-fronted Geese**

*Season Dates:* Open September 1, 2013, through March 10, 2014.

*Daily Bag and Possession Limits:* Two and four, respectively.

**Light Geese**

*Season Dates:* Open September 1, 2013, through March 10, 2014.

*Daily Bag Limit:* 20.

**Nontribal Hunters****Ducks (Including Mergansers and Coots)**

*Season Dates:* Open October 12, 2013, through January 17, 2014.

*Daily Bag and Possession Limits:* Six ducks, including five mallards (no more of which can be two hen mallard), three scaup, two canvasback, two redheads, three wood ducks, and two pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than two hooded mergansers. The possession limit is twice the daily bag limit.

**Canada Geese**

*Season Dates:* Open November 2, 2013, through February 16, 2014.

*Daily Bag and Possession Limits:* 8 and 16, respectively.

#### *White-fronted Geese*

*Season Dates:* Open November 2, 2013, through January 29, 2014.

*Daily Bag and Possession Limits:* One and two, respectively.

#### *Light Geese*

*Season Dates:* Open November 2, 2013, through January 12, 2014, and open February 2 through March 10, 2014.

*Daily Bag and Possession Limits:* 50 and no possession limit.

*General Conditions:* All hunters must comply with the basic Federal migratory bird hunting regulations in 50 CFR part 20, including the use of steel shot. Nontribal hunters must possess a validated Migratory Bird Hunting and Conservation Stamp. The Lower Brule Sioux Tribe has an official Conservation Code that hunters must adhere to when hunting in areas subject to control by the Tribe.

\* \* \* \* \*

(o) Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters)

#### **Band-tailed Pigeons**

*Season Dates:* Open September 1 through 30, 2013.

*Daily Bag and Possession Limits:* 5 and 10 pigeons, respectively.

#### *Mourning Doves*

*Season Dates:* Open September 1 through 30, 2013.

*Daily Bag and Possession Limits:* 10 and 20 doves, respectively.

#### *Ducks (Including Mergansers and Coots)*

*Season Dates:* Open September 21, 2013, through January 5, 2014.

#### *Scaup*

*Season Dates:* Open September 21, 2013, through December 15, 2013.

*Daily Bag and Possession Limits:* Seven ducks, including no more than two hen mallards, one mottled duck, two canvasback, three scaup (when open), two redheads, and two pintail. Coot daily bag limit is 25. Merganser daily bag limit is seven. The possession limit is twice the daily bag limit.

#### *Canada Geese*

*Season Dates:* Open September 21, 2013, through January 5, 2014.

*Daily Bag and Possession Limits:* Four and eight, respectively.

*General Conditions:* Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding

shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(p) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

#### *Ducks (Including Mergansers)*

*Season Dates:* Open September 14 through November 22, 2013.

*Daily Bag and Possession Limits:* Six, including no more than six mallards (three hen mallards), six wood ducks, one redhead, two pintail, and one hooded merganser. The possession limit is twice the daily bag limit.

#### *Geese*

*Season Dates:* Open September 14 through November 22, 2013.

*Daily Bag and Possession Limits:* 5 and 10 Canada geese, respectively, from September 1 through 13, 2013; and 3 and 6 Canada geese, respectively, the remainder of the season. Hunters will be issued five tribal tags during the early season and three tribal tags during the late season for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. A seasonal quota of 300 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

#### *Woodcock*

*Season Dates:* Open September 7 through November 3, 2013.

*Daily Bag and Possession Limits:* Two and four woodcock, respectively.

#### *Doves*

*Season Dates:* Open September 7 through November 3, 2013.

*Daily Bag and Possession Limits:* 10 and 20 doves, respectively.

*General Conditions:* Tribal member shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including season dates, shooting hours, and bag limits, which differ from tribal member seasons. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: Tribal members are exempt from the purchase

of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

\* \* \* \* \*

(s) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters).

#### *Ducks and Mergansers*

*Season Dates:* Open October 5, 2013, through January 18, 2014.

*Daily Bag and Possession Limits:* Seven ducks and mergansers, including no more than two hen mallards, two pintail, two canvasback, and two redheads. The possession limit is twice the daily bag limit.

#### *Coots*

*Season Dates:* Same as ducks.

*Daily Bag and Possession Limits:* 25 coots. The possession limit is twice the daily bag limit.

#### *Common Snipe*

*Season Dates:* Same as ducks.

*Daily Bag and Possession Limits:* 8 and 16 snipe, respectively.

#### *Dark Geese*

*Season Dates:* Open October 5, 2013, through January 18, 2014.

*Daily Bag and Possession Limits:* Four and eight, respectively.

#### *Light Geese*

*Season Dates:* Open October 5, 2013, through January 18, 2014.

*Daily Bag and Possession Limits:* 6 and 12, respectively.

*General Conditions:* Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must possess a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Other regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

\* \* \* \* \*

(w) Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only)

#### **Band-tailed Pigeon**

*Season Dates:* Open September 1 through October 31, 2013.

*Daily Bag and Possession Limits:* Four and eight, respectively.

#### *Mourning Dove*

*Season Dates:* Open September 1 through October 31, 2013.

*Daily Bag and Possession Limits:* 10 and 20, respectively.

*Ducks*

*Season Dates:* Open October 1, 2013, through February 15, 2014.

*Daily Bag and Possession Limits:* 10 ducks. The possession limit is twice the daily bag limit.

*Coots*

*Season Dates:* Open October 1, 2013, through January 31, 2014.

*Daily Bag and Possession Limits:* 25 coots. The possession limit is twice the daily bag limit.

*Common Snipe*

*Season Dates:* Open October 1, 2013, through January 31, 2014.

*Daily Bag and Possession Limits:* 10 and 20 snipe, respectively.

*Geese*

*Season Dates:* Open October 1, 2013, through February 15, 2014.

*Daily Bag and Possession Limits:* 6 and 12, respectively.

*Brant*

*Season Dates:* Open October 1, 2013, through January 31, 2014.

*Daily Bag and Possession Limits:* 3 and 6, respectively.

Tribal members hunting on lands will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations.

(x) *Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)*

*Ducks*

*Season Dates:* Open September 21, 2013, through February 26, 2014.

*Daily Bag and Possession Limits:* Seven ducks, including no more than two hen mallards, two pintail, two canvasback, one harlequin per season, and two redheads. Possession limit is twice the daily bag limit (except for harlequin).

*Geese*

*Season Dates:* Open September 28, 2013, through February 26, 2014.

*Daily Bag and Possession Limits:* Four geese, and may include no more than three light geese. The season on Aleutian Canada geese is closed. Possession limit is twice the daily bag limit.

*Brant*

*Season Dates:* Open November 1, 2013, through February 26, 2014.

*Daily Bag and Possession Limits:* Two and four brant, respectively.

*Coots*

*Season Dates:* Open September 21, 2013, through February 26, 2014.

*Daily Bag and Possession Limits:* 25 and 50 coots, respectively.

\* \* \* \* \*

(z) *Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only)*

*Ducks*

*Season Dates:* Open October 1, 2013, through February 28, 2014.

*Daily Bag and Possession Limits:* 15 and 20, respectively.

*Coots*

*Season Dates:* Open October 1, 2013, through February 15, 2014.

*Daily Bag and Possession Limits:* 20 and 30, respectively.

*Geese*

*Season Dates:* Open October 1, 2013, through February 28, 2014.

*Daily Bag and Possession Limits:* Seven and ten geese, respectively.

*Brant*

*Season Dates:* Open November 1 through 10, 2013.

*Daily Bag and Possession Limits:* Two and two, respectively.

*Mourning Dove*

*Season Dates:* Open September 1 through December 31, 2013.

*Daily Bag and Possession Limits:* 12 and 15 mourning doves, respectively.

*General Conditions:* Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be one-half hour before official sunrise to one-half hour after official sunset.

(aa) *Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)*

*Teal*

*Season Dates:* Open October 10, 2013, through February 22, 2014.

*Daily Bag Limits:* Six teal.

*Ducks*

*Season Dates:* Open October 14 through February 22, 2014.

*Daily Bag Limits:* Eight ducks, including no more than four hen mallards, six black ducks, four mottled ducks, one fulvous whistling duck, four mergansers, three scaup, two hooded merganser, three wood ducks, one canvasback, two redheads, and two

pintail. The season is closed for harlequin ducks.

*Sea Ducks*

*Season Dates:* Open October 7, 2013, through February 22, 2014.

*Daily Bag Limits:* Seven ducks including no more than four of any one species (only one of which may be a hen eider).

*Woodcock*

*Season Dates:* Open October 10 through November 23, 2013.

*Daily Bag Limits:* Three woodcock.

*Canada Geese*

*Season Dates:* Open September 4 through 21, 2013, and open October 28, 2013, through February 22, 2014.

*Daily Bag Limits:* Eight Canada geese.

*Snow Geese*

*Season Dates:* Open September 4 through 21, 2013, and open November 25, 2013, through February 22, 2014.

*Daily Bag Limits:* 15 snow geese.

*Sora and Virginia Rails*

*Season Dates:* Open September 2 through November 10, 2013.

*Daily Bag Limits:* 5 sora and 10 Virginia Rails.

*Snipe*

*Season Dates:* Open September 2 through December 16, 2013.

*Daily Bag Limits:* Eight snipe.

*General Conditions:* Shooting hours are one-half hour before sunrise to sunset. Nontoxic shot is required. All other basic Federal migratory bird hunting regulations contained in 50 CFR part 20 will be observed.

\* \* \* \* \*

(cc) *White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)*

*Band-tailed Pigeons (Wildlife Management Unit 10 and Areas South of Y-70 and Y-10 in Wildlife Management Unit 7, Only)*

*Season Dates:* Open September 1 through 15, 2013.

*Daily Bag and Possession Limits:* Three and six pigeons, respectively.

*Mourning Doves (Wildlife Management Unit 10 And Areas South of Y-70 and Y-10 in Wildlife Management Unit 7, Only)*

*Season Dates:* Open September 1 through 15, 2013.

*Daily Bag and Possession Limits:* 10 and 20 doves, respectively.

*Ducks and Mergansers*

*Season Dates:* Open October 19, 2013, through January 26, 2014.

*Daily Bag Limits:* Seven, including no more than two female mallards, two redhead, two pintail, and one canvasback.

*Coots*

*Season Dates:* Open October 19, 2013, through January 26, 2014.

*Daily Bag and Possession Limits:* 25 and 50, respectively.

*Canada Geese*

*Season Dates:* Open October 19, 2013, through January 26, 2014.

*Daily Bag and Possession Limits:* Three and six geese, respectively.

*General Conditions:* All nontribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking.

Dated: September 12, 2013.

**Rachel Jacobson,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2013-22872 Filed 9-20-13; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 300**

[Docket No. 130104012-3777-02]

**RIN 0648-BC88**

**International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Bigeye Tuna Catch Limit in Longline Fisheries for 2013 and 2014**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations under authority of the Western and

Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to establish a catch limit of 3,763 metric tons (mt) of bigeye tuna (*Thunnus obesus*) for vessels in the U.S. pelagic longline fisheries operating in the western and central Pacific Ocean (WCPO) for each of the calendar years 2013 and 2014. The limit does not apply to vessels in the longline fisheries of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands (CNMI). Once the limit of 3,763 mt is reached in 2013 or 2014, retaining, transshipping, or landing bigeye tuna caught in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), which comprises the majority of the WCPO, will be prohibited for the remainder of the calendar year, with certain exceptions. This action is necessary for the United States to satisfy its obligations under the Convention, to which it is a Contracting Party.

**DATES:** This rule is effective October 23, 2013.

**ADDRESSES:** Copies of supporting documents prepared for this final rule, including the regulatory impact review (RIR) and the Supplemental Information Report prepared for National Environmental Policy Act (NEPA) purposes, are available via the Federal e-Rulemaking Portal, at [www.regulations.gov](http://www.regulations.gov) (search for Docket ID NOAA-NMFS-2013-0090). Those documents, and the small entity compliance guide prepared for this final rule, are also available from NMFS at the following address: Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700. The initial regulatory flexibility analysis (IRFA) and final regulatory flexibility analysis (FRFA) prepared under the authority of the Regulatory Flexibility Act (RFA) are included in the proposed rule and this final rule, respectively.

**FOR FURTHER INFORMATION CONTACT:** Rini Ghosh, NMFS PIRO, 808-944-2273.

**SUPPLEMENTARY INFORMATION:****Background**

On June 18, 2013, NMFS published a proposed rule in the **Federal Register** (78 FR 36496) to revise regulations at 50 CFR part 300, subpart O, to implement a decision of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission). The proposed

rule was open to public comment through July 18, 2013.

This final rule is issued under the authority of the WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), which authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the WCPFC. The authority to promulgate regulations has been delegated to NMFS.

This final rule implements for U.S. fishing vessels the longline bigeye tuna catch limit established in WCPFC Conservation and Management Measure (CMM) 2012-01, "Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean." The preamble to the proposed rule includes detailed background information, including on the Convention and the WCPFC, the provisions of CMM 2012-01 being implemented in this rule, and the basis for the proposed regulations, which is not repeated here.

**New Requirements**

This final rule implements the longline bigeye tuna catch limit of CMM 2012-01 for U.S. fishing vessels. The limit and associated restrictions apply to U.S. longline fisheries in the WCPO other than those of the three U.S. Participating Territories to the WCPFC—American Samoa, Guam, and the CNMI.

**Section 113 Authorization**

Because they are integral to this rulemaking, it is important to explain arrangements between fishing vessels and the U.S. Participating Territories, called Section 113(a) arrangements, prior to discussing the rule. These are allowed by section 113(a) of the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112-55, 125 Stat. 552 *et seq.*, (continued by Pub. L. 113-6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013)) (hereinafter, "Section 113 authorization"). We refer to the original law, enacted for 2011 and 2012, as "prior Section 113(a)"; and arrangements authorized under this law are referred to as "Section 113(a) arrangements."

The Section 113 authorization enables the U.S. Participating Territories of the WCPFC to use, assign, allocate, and manage catch limits or fishing effort

limits agreed to by the WCPFC through arrangements with U.S. vessels with permits issued under the Fishery Ecosystem Plan for the Pacific Pelagic Fisheries of the Western Pacific Region (Pelagics FEP). It also further directs the Secretary of Commerce, for the purposes of annual reporting to the WCPFC, to attribute catches made by vessels operating under Section 113(a) arrangements to the U.S. Participating Territories. The Section 113 authorization also establishes specific eligibility criteria for these arrangements. This final rule takes into consideration the provisions of the Section 113 authorization and establishes additional requirements and conditions for catches of vessels under Section 113(a) arrangements to be attributed to the U.S. Participating Territories.

The Section 113 authorization remains in effect until the earlier of December 31, 2013, or such time as the Western Pacific Fishery Management Council (WPFMC) recommends, and the Secretary approves, an amendment to the Pelagics FEP that would authorize U.S. Participating Territories to use, assign, allocate, and manage catch limits of highly migratory fish stocks, or fishing effort limits, established by the WCPFC, and the amendment is implemented via regulations. The WPFMC at its 157th meeting took final action to amend the Pelagics FEP accordingly; however, the amendment has not yet been approved or implemented by NMFS. It is possible the amendment, if approved, will apply in 2013 or 2014, in which case the provisions of the final rule that take into consideration the Section 113 authorization would cease to apply, as the amendment would effectively replace it. The Section 113 authorization may also cease to apply on its own in 2014, if the effective date is not further extended beyond December 31, 2013. Thus, the regulatory text only implements the provisions for Section 113(a) arrangements for 2013. NMFS would take appropriate action to amend the regulatory text if Section 113(a) arrangements are applicable in 2014.

#### *Establishment of the Limit*

For the purpose of this rule, the longline fisheries of the three U.S. Participating Territories are distinguished from the other longline fisheries of the United States (all of which include U.S.-flagged vessels) based on three factors: (1) Where the bigeye tuna are landed; (2) the types of Federal longline fishing permits registered to the fishing vessel; or (3)

whether the fishing vessel is included in a Section 113(a) arrangement. With respect to the first factor, except for vessels registered for use under valid American Samoa Longline Limited Access Permits, bigeye tuna landed by U.S. vessels in any of the three U.S. Participating Territories will be attributed to the longline fishery of that Participating Territory. However, in order for that attribution, the bigeye tuna: (1) Must not be harvested in the portion of the U.S. exclusive economic zone (EEZ) surrounding the Hawaiian Archipelago; (2) cannot be subject to attribution to another U.S. Participating Territory under an existing Section 113(a) arrangement; and (3) must be landed by a U.S. fishing vessel operated in compliance with one of the permits required under the regulations implementing the Pelagics FEP developed by the WPFMC or the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (West Coast HMS FMP) developed by the Pacific Fishery Management Council (i.e., a permit issued under 50 CFR 665.801 or 660.707).

For the second factor, bigeye tuna that are caught by a fishing vessel registered for use under a valid American Samoa Longline Limited Access Permit will generally be attributed to the longline fishery of American Samoa, regardless of where that catch is landed. However, that bigeye tuna: (1) Must not be harvested in the portion of the U.S. EEZ surrounding the Hawaiian Archipelago; (2) cannot be subject to attribution under an existing Section 113(a) arrangement; and (3) must be landed by a U.S. fishing vessel operated in compliance with one of the permits required under the regulations implementing the Pelagics FEP or the West Coast HMS FMP. NMFS makes this distinction because American Samoa Longline Limited Access Permits are issued only to participants that have demonstrated historical participation in the American Samoa pelagic fisheries, such that the catch may properly be attributed to that territory.

Under the third factor, bigeye tuna that are caught by a fishing vessel that is included in a Section 113(a) arrangement will be attributed to the longline fishery of the appropriate U.S. Participating Territory that is party to the arrangement, subject to certain criteria. The longline fisheries of the United States and its territories operating in the WCPO are managed as discrete fisheries, with separate compilations of catch and effort statistics and separate management measures for each fishery. In order to allow for the orderly administration of

these fisheries and consistently attribute catches to the fisheries of the U.S. Participating Territories under eligible Section 113(a) arrangements, NMFS will wait to attribute catches under eligible Section 113(a) arrangements until the date the catch limit will be reached can be forecasted with a fairly high degree of certainty. Thereafter, NMFS will attribute catches to the fisheries of the U.S. Participating Territories under eligible Section 113(a) arrangements starting seven days before the date the U.S. catch limit is forecasted to be reached. This procedure will allow NMFS to properly administer and enforce the specific management requirements for each fishery throughout the year, consistent with the approved Pelagics FEP.

NMFS will prepare forecasts during 2013 and 2014 of the date that the bigeye tuna catch limit will be reached and periodically make these forecasts available to the public, such as by posting on a Web site. All the forecasts prepared up until the time that catch attribution to the U.S. Participating Territories under Section 113(a) arrangements actually begins will assume that there will be no such catch attribution to the U.S. Participating Territories. Those forecasts are subject to change as new information becomes available. Because of these potential changes, it is necessary to identify a particular forecast for the purpose of determining when catch attribution to the U.S. Participating Territories under eligible Section 113(a) arrangements will begin. For this purpose, NMFS will use the first forecast that indicates the catch limit will be reached within 28 days of the date of preparation of that forecast. The projected catch limit date in this forecast will be called, for the purpose of this final rule, the pre-Section 113(a) attribution forecast date. As soon as NMFS determines the pre-Section 113(a) attribution forecast date, NMFS will evaluate all Section 113(a) arrangements that it has received, based on the eligibility criteria specified below, and calculate a new forecast date for the catch limit, this time excluding from the tally any U.S. catches to be attributed to the U.S. Participating Territories under eligible Section 113(a) arrangements. In order to allow NMFS a reasonable amount of time to complete this process, NMFS will begin attributing catches to the U.S. Participating Territories under eligible Section 113(a) arrangements seven days before the pre-Section 113(a) attribution forecast date and the new forecast date for the catch limit will be calculated based on this attribution start date. At

that time, NMFS will also make publicly available a new forecast date on a Web site—the post-Section 113(a) attribution forecast date—and will update that forecast date as appropriate throughout 2013 and 2014 (if Section 113(a) arrangements are applicable in 2014).

There will be no official due date for the receipt by NMFS of potentially eligible Section 113(a) arrangements. However, NMFS will need 14 days to process arrangements that it receives, so for an arrangement received after the date that NMFS determines the pre-Section 113(a) attribution forecast date, attribution to the appropriate U.S. Participating Territory will start 14 days after NMFS has received the arrangement or seven days before the pre-Section 113(a) attribution forecast date, whichever date is later.

The final rule also includes certain requirements that must be met in order for NMFS to attribute bigeye tuna caught by a particular vessel included in a Section 113(a) arrangement to the longline fishery of a U.S. Participating Territory. First, with the exception of existing arrangements received by NMFS prior to the effective date of the final rule, NMFS will need to receive from the vessel owner or designated representative a copy of the arrangement at least 14 days prior to the date the bigeye tuna were caught. In addition, the arrangement will need to satisfy specific criteria, discussed in detail in the section below.

Any bigeye tuna attributed to the longline fisheries of American Samoa, Guam, or the CNMI as specified above will not be counted against the U.S. limit. All other bigeye tuna captured by longline gear in the Convention Area by U.S. longline vessels and retained will be counted against the U.S. limit of 3,763 mt.

#### *Eligible Arrangements*

An arrangement is not eligible for the attribution of bigeye tuna to the U.S. Participating Territories under the terms of the Section 113 authorization unless the arrangement: (1) Includes vessels registered for use with valid permits issued under the Pelagics FEP; (2) imposes no requirements regarding where the vessels fish or land their catch; (3) is signed by all the owners of the vessels included in the arrangement, or by their designated representative(s); (4) is signed by an authorized official of the U.S. Participating Territory(ies) or his or her designated representative(s); and (5) is funded by deposits to the Western Pacific Sustainable Fisheries Fund in support of fisheries development projects identified in a territory's Marine Conservation Plan

adopted pursuant to section 204 of the MSA. If NMFS determines that an arrangement does not meet the criteria for eligibility, NMFS will notify the parties to the arrangement or their designated representative(s) of its determination within 14 days of receiving a copy of the arrangement.

#### *Vessels Under one or More Categories for Attribution to the U.S. Participating Territories*

Consistent with the statutory language of the Section 113 authorization, any catch of bigeye tuna that is landed by a vessel operating under an eligible Section 113(a) arrangement is attributed to the longline fishery of the U.S. Participating Territory that is a party to the arrangement. Where there is no section 113(a) arrangement, this final rule provides that catch is attributed to the longline fishery either where the catch is landed or, in the case of vessels with an American Samoa Longline Limited Access Permit, to American Samoa, provided that the fish are not harvested in the U.S. EEZ surrounding Hawaii. This final rule clarifies that, notwithstanding the other landing or permit attributions, bigeye tuna that is caught by a vessel included in an eligible Section 113(a) arrangement will always be attributed to the U.S. Participating Territory that is a party to the arrangement on or after the attribution start date. For example, fish harvested on the high seas by a vessel operating under both a Hawaii Longline Limited Access Permit and an American Samoa Longline Limited Access Permit ordinarily will be attributed to American Samoa regardless of where it is landed. However, if the vessel enters into a valid section 113(a) arrangement with a U.S. Participating Territory catch will be attributed to the U.S. Participating Territory that is a party to the arrangement, on or after the attribution start date, regardless of where the catch is landed or whether the vessel has an American Samoa Longline Limited Access Permit.

#### *Announcement of the Limit Being Reached*

If NMFS determines that the limit is expected to be reached before the end of 2013 or 2014, NMFS will publish a notice in the **Federal Register** to announce specific fishing restrictions that are effective from the date the limit is expected to be reached until the end of the 2013 or 2014 calendar year. NMFS will publish the notice of the restrictions at least seven calendar days before the effective date to provide vessel operators with advance notice. Periodic forecasts of the date the limit

is expected to be reached will be made available to the public, such as by posting on a Web site, to help vessel operators plan for the possibility of the limit being reached.

#### *Restrictions After the Limit is Reached*

(1) *Retain on board, transship, or land bigeye tuna:* Starting on the effective date of the restrictions and extending through December 31 of that calendar year, it will be prohibited to use a U.S. fishing vessel to retain on board, transship, or land bigeye tuna captured in the Convention Area by longline gear, except as follows:

First, any bigeye tuna already on board a fishing vessel upon the effective date of the restrictions can be retained on board, transshipped, and/or landed, provided that they are landed within 14 days after the restrictions become effective. A vessel that had declared to NMFS pursuant to 50 CFR 665.803(a) that the current trip type is shallow-setting is not subject to this 14-day landing restriction, so these vessels would be able to land fish more than 14 days after the restrictions become effective.

Second, bigeye tuna captured by longline gear can be retained on board, transshipped, and/or landed if they are caught by a fishing vessel registered for use under a valid American Samoa Longline Limited Access Permit, or if they are landed in American Samoa, Guam, or the CNMI. However, the bigeye tuna must not be caught in the portion of the U.S. EEZ surrounding the Hawaiian Archipelago, and must be landed by a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.801.

Third, bigeye tuna captured by longline gear can be retained on board, transshipped, and/or landed if they are caught by a vessel that is included in an eligible Section 113(a) arrangement, as specified above. Also, these bigeye tuna must be subject to attribution to the longline fishery of American Samoa, Guam, or the CNMI in accordance with the terms of the arrangement, and to the extent consistent with the requirements and procedures set forth in the final rule. However, NMFS must have received from the vessel owner or designated representative a copy of the arrangement at least 14 days prior to the activity (i.e., the retention on board, transshipment, or landing). The advance notification provision will not apply to existing arrangements received by NMFS prior to the effective date of the final rule.

(2) *Transshipment of bigeye tuna to certain vessels:* Starting on the effective

date of the restrictions and extending through December 31 of that calendar year, it will be prohibited to transship bigeye tuna caught in the Convention Area by longline gear to any vessel other than a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.801.

(3) *Fishing inside and outside the Convention Area:* To help ensure compliance with the restrictions related to bigeye tuna caught by longline gear in the Convention Area, the final rule establishes two additional, related prohibitions that are in effect starting on the effective date of the restrictions and extending through December 31 of that calendar year. First, vessels are prohibited from fishing with longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip that is in progress at the time the announced restrictions go into effect. In that exceptional case, the vessel still must land any bigeye tuna taken in the Convention Area within 14 days of the effective date of the restrictions, as described above. Second, if a vessel is used to fish using longline gear outside the Convention Area and enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing while the vessel is in the Convention Area. These two prohibitions do not apply to the following vessels: (1) Vessels on declared shallow-setting trips pursuant to 50 CFR 665.803(a); or (2) vessels operating for the purposes of this rule as part of the longline fisheries of American Samoa, Guam, or the CNMI. This second group includes vessels registered for use under valid American Samoa Longline Limited Access Permits and vessels landing their bigeye tuna catch in one of the three U.S. Participating Territories, so long as these vessels conduct fishing activities in accordance with the conditions described above; or vessels included in an eligible Section 113(a) arrangement, as specified above, provided that their catches of bigeye tuna are subject to attribution to the longline fishery of American Samoa, Guam, or the CNMI at the time of the activity.

#### Comments and Responses

NMFS received four sets of comments on the proposed rule. The comments are summarized below, followed by responses from NMFS.

*Comment 1:* One commenter stated that the catch limit should be 0.5 mt and all longline operations should be prohibited in U.S. waters. Tuna are

vanishing from the earth. NMFS should address overfishing and reduce overfishing by 50 percent.

Another commenter requests NMFS end overfishing and set catch limits for all fishing within U.S. jurisdiction, including vessels in the longline fisheries of American Samoa, Guam and the CNMI. The commenter notes that the rule would establish a 3,763 mt bigeye tuna catch limit for vessels in the U.S. pelagic longline fisheries operating in the WCPO under the authority of the WCPFC Implementation Act, and that the WCPFC Implementation Act authorizes NMFS to promulgate such regulations as may be necessary to carry out the United States' obligations under the Convention and the WCPFC Implementation Act, including recommendations and decisions adopted by the Commission. Nothing in the WCPFC Implementation Act precludes NMFS from setting catch limits lower than specified in recommendations by the Commission. Catch limits for all vessels are imperative given the recent science showing that increases in fishing in the past 16 years have altered the Pacific Ocean ecosystem, perhaps irreversibly. A fourfold increase in hooks in the Hawaii-based deep-set longline fishery during this time period has resulted in a 50% decrease in catch of target big fish like bigeye tuna. As a result of fewer target species being available, discards have increased to an estimated 30–40% of total catch. Current fishing levels are unsustainable and NMFS has a legal and moral mandate to reduce bigeye tuna mortality immediately.

*Response:* As stated in the preamble to the proposed rule, the WCPFC established the 3,763 mt longline bigeye tuna catch limit for the United States in CMM 2012–01, and NMFS is implementing this catch limit to fulfill the obligations of the United States under the Convention, pursuant to the WCPFC Implementation Act. NMFS notes that it has determined that the stock of bigeye tuna in the Pacific Ocean is subject to overfishing, according to the NMFS stock status determination criteria established in the Pelagics FEP and West Coast HMS FEP, and, pursuant to the separate MSA process, NMFS and the Regional Fishery Management Councils may consider other management actions for this stock that are outside the scope of this rulemaking. However, now NMFS must implement the 3,763 mt catch limit established by the WCPFC in CMM 2012–01 in order to meet the obligations of the United States as a Contracting Party to the Convention.

*Comment 2:* The proposed rule includes a lengthy and complex explanation of the context for the proposed rule, implementation of process and deadlines, exceptions, environmental impacts, and regulatory flexibility analysis. The proposed rule also purports to give notice regarding a variety of possible scenarios that may or may not occur later in 2013 or 2014, and which may or may not alter the underlying international, U.S. statutory, or U.S. regulatory regime. This comment does not endorse or disagree with NMFS' explanations or suppositions, but expresses skepticism that the proposed rule provides meaningful notice as to application of the proposed rule, or as to future changes to the proposed rule once adopted in final, should there be material alterations made to the underlying catch limit regime now in effect under international treaty, U.S. law, and U.S. regulatory requirements.

This comment does support the adoption of the bigeye tuna catch limit regulations so long as they continue to confirm and implement the Section 113 authorization. The Hawaii Longline Association will be entering into a new Section 113(a) arrangement that is substantially the same as past Section 113(a) arrangements. The proposed rule does not appear to alter in any way the applicable criteria for a qualifying Section 113(a) arrangement. It would be objectionable for NMFS to intend anything different for Section 113(a) arrangements, because that would conflict with applicable law and because fair notice of a different intent is not given in the proposed rule.

*Response:* As stated in the preamble to the proposed rule, prior Section 113(a) was in effect in 2011 and 2012, and the requirements for Section 113(a) arrangements in this rule are identical to the requirements for Section 113(a) arrangements specified in the interim final rule to implement the WCPFC-established longline bigeye tuna catch limit for 2012 (2012 rule; see 77 FR 51709). NMFS is not introducing new procedures for Section 113(a) arrangements in this rule. Moreover, although this rule implements the 3,763 mt longline bigeye tuna catch limit for each of the 2013 and 2014 calendar years, the rule only implements the provisions for Section 113(a) arrangements for 2013, as it is unknown whether Section 113(a) arrangements would be applicable in 2014. NMFS will take appropriate action to amend the regulatory text if Section 113(a) arrangements are applicable in 2014.

*Comment 3:* The U.S. Department of the Interior provided a letter stating that

it had reviewed the proposed rule and had no comments.

*Response:* NMFS acknowledges the comment.

*Comment 4:* While the proposed rule ostensibly sets catch limits, it does not apply the limit to vessels in the longline fisheries of American Samoa, Guam, or the CNMI. The practical effect is to allow unlimited bigeye tuna fishing through agreements transferring the U.S. Participating Territories' unlimited quota by virtue of a loophole created by appropriations riders—prior Section 113(a) and the Section 113 authorization. At the meeting concluded on June 28, 2013, the WPFMC recommended that the Pelagics FEP be amended to include a 2,000 mt bigeye tuna longline limit for the U.S. Participating Territories. There is no reason not to implement this recommendation now via the rule.

In addition to setting enforceable bigeye tuna catch limits for all U.S. pelagic longline vessels, NMFS must require 100 percent observer coverage on the deep-set longline vessels, per the recommendations of the U.S. Fish and Wildlife Service (USFWS) in its 2012 biological opinion for the operation of Hawaii-based pelagic longline fisheries. Deep-set longline vessels currently have 20 percent observer coverage, which is inadequate to monitor protected species interactions.

If NMFS finalizes the proposed rule—allowing unlimited fishing for bigeye tuna—it must reinstate consultation under Section 7 of the Endangered Species Act (ESA) on the activity's effects on endangered species such as seabirds, sea turtles, and marine mammals. The most recent biological opinions do not include fishing effort data from 2011 or 2012—years in which there have been no bigeye tuna limits—and thus, this is new information triggering reinstitution of consultation because the effects of the agency action may affect listed species in a manner or to an extent not considered in prior biological opinions.

*Response:* This rule implements the longline-related provisions of CMM 2012–01 for the United States' longline fisheries, pursuant to the WCPFC Implementation Act, as well as the requirements of the Section 113 authorization. As stated in the preamble to the proposed rule, under CMM 2012–01 and its Attachment F, the longline fisheries of American Samoa, Guam, and the CNMI are not subject to longline bigeye tuna catch limits. However, implementing WPFMC recommendations, including the bigeye tuna catch limits for U.S. Participating Territories, must be done by the

procedures specified in the MSA, and, if appropriate, would be part of a separate rulemaking pursuant to MSA authority. The WPFMC is currently developing its recommendation for the 2,000 mt catch limits for U.S. Participating Territories for Secretarial review, pursuant to the MSA process. Following transmittal, NMFS will review the amendment for consistency with all applicable law and seek public comment, consistent with the provisions of MSA.

USFWS provided conservation recommendations regarding the amount of observer coverage for the Hawaii-based deep set longline fishery in its 2012 Biological Opinion (Biological Opinion of the U.S. Fish and Wildlife Service for the Operation of Hawaii-based Pelagic Longline Fisheries, Shallow Set and Deep Set, Hawaii; January 6, 2012). As stated in the 2012 Biological Opinion, conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat (e.g., to help implement recovery plans, or to collect information). USFWS recommended that observer coverage for the deep-set fishery be increased, as funds are available, and that the amount of coverage be increased to 100 percent for vessels fishing within the range of the short-tailed albatross (*Phoebastria albatrus*). However, NMFS is satisfied that 20% observer coverage is sufficient to provide statistically reliable information with which to assess the fishery's impacts on protected species. Moreover, whether or when to make changes to observer coverage is outside the scope of this rulemaking.

NMFS disagrees that this action triggers reinstitution of formal consultation under Section 7 of the ESA. Section 7(a)(2) of the ESA requires agencies to ensure that their activities are not likely to jeopardize the continued existence of listed species. An agency must reinstitute consultation under ESA section 7(a)(2) whenever one of the four reinstitution triggers under 50 CFR subpart 402.16 is met. The deep-set fishery currently operates under a October 2005 “no jeopardy” Biological Opinion, which determined that the continued authorization of the deep-set longline fishery complies with ESA section 7(a)(2). On June 5, 2013, NMFS considered information relative to fishing effort under the 3,763 bigeye tuna catch limit as well as the potential for increased effort under the requirements of Section 113 authorization, and determined that these changes in the conduct of the fishery have not resulted in adverse

effects to listed species or critical habitat that were not considered in the 2005 consultation. Accordingly, the 2005 Biological Opinion remains valid with respect to those protected species addressed in the consultation.

Moreover, in June 2013, NMFS reinstituted consultation on the deep-set fishery in response to the recent listing of the insular false killer whale under ESA and the deep-set fishery's interaction with one sperm whale. This consultation is ongoing and will consider, among other information, the effects of the continuing operation of the deep-set fishery under the 3,763 mt annual limit as well as the requirements of the Section 113 authorization.

### Changes from the Proposed Rule

As discussed above, this final rule clarifies that, consistent with the express requirements of the Section 113 authorization, bigeye tuna catch by a vessel operating under an eligible Section 113(a) arrangement must be attributed to the U.S. Participating Territory party to the arrangement, if caught on or after the attribution start date, notwithstanding where the fish is landed, or whether the vessel is operating under an American Samoa Longline Limited Access Permit. NMFS has included language in the regulatory text to clarify that if a given catch of bigeye tuna is caught by a vessel not operating under an eligible Section 113(a) arrangement but has an American Samoa Longline Limited Access Permit, and the fish is not harvested in the U.S. EEZ around Hawaii, that catch will be attributed to the longline fishery of American Samoa. NMFS has not made any substantive changes to the proposed rule in this final rule.

### Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this final rule is consistent with the WCPFC Implementation Act and other applicable laws.

### Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866.

### Regulatory Flexibility Act

A FRFA was prepared. The FRFA incorporates the IRFA prepared for the proposed rule. The analysis in the IRFA is not repeated here in its entirety.

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble of the proposed rule and in the **SUMMARY** and **SUPPLEMENTARY**

**INFORMATION** sections of this final rule, above. The analysis follows:

### **Significant Issues Raised by Public Comments in Response to the IRFA**

NMFS did not receive any public comments in response to the IRFA.

### **Description of Small Entities to Which the Rule Will Apply**

On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). The rule increased the size standard for Finfish Fishing from \$4.0 to 19.0 million, Shellfish Fishing from \$4.0 to 5.0 million, and Other Marine Fishing from \$4.0 to 7.0 million (Id. at 37400 (Table 1)). Pursuant to the Regulatory Flexibility Act, and prior to SBA's June 20 final rule, initial regulatory flexibility analysis was developed for this action using SBA's former size standards. NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. NMFS has determined that the new size standards do not affect analyses prepared for this action.

The final rule will apply to owners and operators of U.S. vessels fishing with longline gear in the Convention Area, except those that are part of the longline fisheries of American Samoa, Guam, or the CNMI. The total number of affected entities is approximated by the number of Hawaii Longline Limited Access Permits (issued under 50 CFR 665.13) that are assigned to vessels (permitted vessels). Under the limited access program, no more than 164 permits may be issued. During 2006–2012 the number of permitted vessels ranged from 130 to 145 (these figures and some other estimates in the remainder of this FRFA differ slightly from previously published estimates because of subsequent updates to the data and/or methods that were used for the estimates). The current number of permitted vessels (as of August 2013) is 130. Traditionally, most of the Hawaii fleet's fishing effort has been in the Convention Area, with the remainder of the effort to the east of the Convention Area, as described below. Owners and operators of U.S. longline vessels based on the U.S. west coast also could be affected by this proposed rule. However, based on the complete lack of fishing by that fleet in the Convention Area since 2005, it is expected that very few, if any,

U.S. west coast vessels would be affected.

Most of the Hawaii longline fleet targets bigeye tuna using deep sets, and during certain parts of the year, portions of the fleet target swordfish using shallow sets. In the years 2005 through 2012, the estimated numbers of Hawaii longline vessels that actually fished ranged from 124 to 129. Of the vessels that fished, the number of vessels that engaged in deep-setting in the years 2005 through 2012 ranged from 122 to 129, and the number of vessels that engaged in shallow-setting ranged from 18 to 35. The number of vessels that engaged in both deep-setting and shallow-setting ranged from 17 to 35. The number of vessels that engaged exclusively in shallow-setting ranged from zero to two.

As an indication of the size of businesses in the fishery, average annual ex-vessel revenue for the fleet during 2005–2010 was about \$71 million (in 2012 dollars). Virtually all of those revenues are believed to come from shallow-set and deep-set longlining.

### **Recordkeeping, Reporting, and Other Compliance Requirements**

The final rule will not establish any new reporting or recordkeeping requirements within the meaning of the Paperwork Reduction Act. The classes of small entities subject to the requirements and the types of professional skills necessary to fulfill each of the requirements are described in the IRFA.

### **Disproportionate Impacts**

As indicated above, all of the affected entities are likely to be small entities, so there are not expected to be any disproportionate economic impacts resulting from this final rule. However, as described in the IRFA, there could be disproportionate impacts according to vessel size. The 500 mt eastern Pacific Ocean (EPO) bigeye catch limit for 2013 applies only to vessels greater than 24 m in length overall, so in the event that the WCPO bigeye tuna fishery is closed and the 500 mt limit is reached in the EPO, only vessels 24 m or less in length would be able to take advantage of the alternative opportunity of deep-setting for bigeye tuna in the EPO. On the other hand, smaller vessels can be expected to find it more difficult, risky, and/or costly to fish in the EPO during the relatively rough winter months than larger vessels.

All the affected entities are longline fishing businesses, so there would be no disproportionate economic impacts

based on fishing gear. No disproportionate economic impacts based on home port are expected.

### **Steps Taken To Minimize the Significant Economic Impacts on Small Entities**

NMFS explored alternatives that would achieve the objective of this action while minimizing economic impacts on small entities. As described in the RIR prepared for the proposed rule, NMFS analyzed three alternative approaches (called “options” in the RIR) regarding when NMFS would start attributing catches to the U.S. Participating Territories under Section 113(a) arrangements. The rule implements “option 2,” under which NMFS will start attributing catches to the U.S. Participating Territory at a particular point before the U.S. bigeye tuna catch limit is forecasted to be reached. Under “option 1,” the timing of attribution would not be constrained; that is, it would be done according to the terms of the arrangement. Under “option 3,” NMFS would start attributing to the U.S. Participating Territory only after the U.S. bigeye tuna catch limit has been reached. Option 3 would not be less constraining or costly to affected entities than the proposed option. Option 1 would have the potential to be less constraining and costly, since Section 113(a) arrangements could be written such that bigeye tuna is attributed to the Participating Territories starting at any time, including well before the U.S. catch limit is forecasted to be reached. Under option 1, therefore, there would be the potential (depending on the terms of any arrangements) for there to be a lower likelihood of the catch limit being reached than under the proposed option, and thus any constraining effects on the activities of affected entities would be accordingly lower. The magnitude of these differences would depend on the terms of any eligible arrangements. As an extreme example, arrangements could be written such that there is essentially no chance that the U.S. catch limit would be reached, in which case affected entities would be unconstrained by the catch limit and bear no costs as a result of the rule. NMFS favors option 2 and rejects option 1 for the following reasons: In order to allow for the orderly administration of these fisheries and a consistent manner of attributing catches to the fisheries of the U.S. Participating Territories under eligible Section 113(a) arrangements, NMFS believes it important to wait to attribute catches under eligible Section 113(a) arrangements until the date the catch

limit would be reached can be forecasted with a fairly high degree of probability. Thereafter, NMFS will attribute catches to the fisheries of the U.S. Participating Territories under eligible Section 113(a) arrangements starting seven days before the date the U.S. catch limit is forecasted to be reached. This procedure will allow NMFS to properly administer and enforce the specific management requirements for each fishery throughout the year, consistent with the approved Pelagics FEP.

NMFS also considered the no-action alternative, which could result in fewer costs than the proposed action for many affected entities (but as described in the IRFA, for some affected entities, the rule could be more economically beneficial than no-action), but NMFS has determined that the no-action alternative would fail to accomplish the objectives of the WCPFC Implementation Act, including satisfying the obligations of the United States as a Contracting Party to the Convention. For that reason, the no-action alternative is rejected.

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide has been prepared. The guide will be sent to permit holders in the affected fisheries. The guide and this final rule will also be available at [www.fpir.noaa.gov](http://www.fpir.noaa.gov) and by request from NMFS PIRO (see **ADDRESSES**).

#### List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: September 18, 2013.

**Alan D. Risenhoover,**

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

## PART 300—INTERNATIONAL FISHERIES REGULATIONS

### Subpart O [Amended]

■ 1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

**Authority:** 16 U.S.C. 6901 *et seq.*

■ 2. Section 300.224 is revised to read as follows:

#### § 300.224 Longline fishing restrictions.

(a) *Establishment of bigeye tuna catch limit.* There is a limit of 3,763 metric tons of bigeye tuna that may be captured in the Convention Area by longline gear and retained on board by fishing vessels of the United States during each of the calendar years 2013 and 2014.

(b) *Exception for bigeye tuna landed in territories.* Except as provided in paragraphs (c) and (d), bigeye tuna landed in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands will be attributed to the longline fishery of the territory in which it is landed and will not be counted against the limit established under paragraph (a) of this section, provided that:

(1) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago; and

(2) The bigeye tuna were landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(c) *Exception for bigeye tuna caught by vessels with American Samoa Longline Limited Access Permits.* Except as provided in paragraph (d), bigeye tuna caught by a vessel registered for use under a valid American Samoa Longline Limited Access Permit issued under § 665.801(c) of this title will be attributed to the longline fishery of American Samoa and will not be counted against the limit established under paragraph (a) of this section, provided that:

(1) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago; and

(2) The bigeye tuna were landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(d) *Exception for bigeye tuna caught by vessels included in Section 113(a) arrangements.* Bigeye tuna caught in 2013 by a vessel that is included in an arrangement under the authorization of Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Public Law 113–6, 125 Stat. 603, section 110, the

Department of Commerce Appropriations Act, 2013), will be attributed to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, according to the terms of the arrangement to the extent they are consistent with this section and applicable law, and will not be counted against the limit, provided that:

(1) NMFS has received a copy of the arrangement from the vessel owner or a designated representative at least 14 days prior to the date the bigeye tuna was caught, except that this requirement shall not apply to any arrangement provided to NMFS prior to the effective date of this paragraph;

(2) The bigeye tuna was caught on or after the “start date” specified in paragraph (g)(2) of this section; and

(3) NMFS has determined that the arrangement satisfies the requirements of Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Public Law 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013), in accordance with the criteria specified in paragraph (g)(3) of this section.

(e) *Announcement of catch limit being reached and fishing prohibitions.* NMFS will monitor retained catches of bigeye tuna with respect to the limit established under paragraph (a) of this section using data submitted in logbooks and other available information. After NMFS determines that the limit is expected to be reached by a specific future date, and at least seven calendar days in advance of that specific future date, NMFS will publish a notice in the **Federal Register** announcing that specific prohibitions will be in effect starting on that specific future date and ending December 31 of that calendar year.

(f) *Prohibitions after catch limit is reached.* Once an announcement is made pursuant to paragraph (e) of this section, the following restrictions will apply during the period specified in the announcement:

(1) A fishing vessel of the United States may not be used to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area, except as follows:

(i) Any bigeye tuna already on board a fishing vessel upon the effective date of the prohibitions may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective. The 14-day landing requirement does not apply

to a vessel that has declared to NMFS, pursuant to § 665.803(a) of this title, that the current trip type is shallow-setting.

(ii) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they are landed in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, provided that:

(A) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago;

(B) Such retention, transshipment, and/or landing is in compliance with applicable laws and regulations; and

(C) The bigeye tuna are landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(iii) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they are caught by a vessel registered for use under a valid American Samoa Longline Limited Access Permit issued under § 665.801(c) of this title, provided that:

(A) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago;

(B) Such retention, transshipment, and/or landing is in compliance with applicable laws and regulations; and

(C) The bigeye tuna are landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(iv) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed in 2013 if they were caught by a vessel that is included in an arrangement under the authorization of Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Public Law 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013), if the arrangement provides for the bigeye tuna when caught to be attributed to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, provided that:

(A) NMFS has received a copy of the arrangement at least 14 days prior to the activity (i.e., the retention on board, transshipment, or landing), unless NMFS has received a copy of the arrangement prior to the effective date of this section;

(B) The “start date” specified in paragraph (g)(2) of this section has occurred or passed; and

(C) NMFS has determined that the arrangement satisfies the requirements of Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations

Act, 2012 (continued by Public Law 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013), in accordance with the criteria specified in paragraph (g)(3) of this section.

(2) Bigeye tuna caught by longline gear in the Convention Area may not be transshipped to a fishing vessel unless that fishing vessel is operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(3) A fishing vessel of the United States may not be used to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip during which the prohibitions were put into effect as announced under paragraph (e) of this section, in which case the bigeye tuna on board the vessel may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective. This prohibition does not apply to a vessel that catches bigeye tuna that is to be attributed to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands in accordance with paragraphs (b), (c), or (d) of this section, or to a vessel for which a declaration has been made to NMFS, pursuant to § 665.803(a) of this title, that the current trip type is shallow-setting.

(4) If a fishing vessel of the United States, other than a vessel that catches bigeye tuna that is to be attributed to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, in accordance with paragraphs (b), (c), and (d) of this section, or a vessel for which a declaration has been made to NMFS, pursuant to § 665.803(a) of this title, that the current trip type is shallow-setting, is used to fish in the Pacific Ocean using longline gear outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must, while it is in the Convention Area, be stowed in a manner so as not to be readily available for fishing; specifically, the hooks, branch or dropper lines, and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

(g) *Procedures and conditions for Section 113(a) arrangements.* This paragraph establishes procedures to be

followed and conditions that must be met in 2013 with respect to arrangements authorized under Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Public Law 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013). These procedures and conditions apply to paragraphs (d), (f)(1)(iv), (f)(3), and (f)(4) of this section.

(1) For the purpose of this section, the “pre-Section 113(a) attribution forecast date” is the date the catch limit established under paragraph (a) of this section is forecast by NMFS to be reached in the calendar year, assuming that no catches would be attributed to the longline fisheries of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands under arrangements authorized under Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Public Law 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013). Since forecasts are subject to change as new information becomes available, NMFS will use for this purpose the first forecast it prepares that indicates that the date of the limit being reached is less than 28 days after the date the forecast is prepared.

(2) For the purpose of this section, the “start date” for attribution of catches to the longline fisheries of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands for a particular arrangement is:

(i) Seven days before the pre-Section 113(a) attribution forecast date, for arrangements copies of which are received by NMFS no later than the date NMFS determines the pre-Section 113(a) attribution forecast date; and

(ii) Seven days before the pre-Section 113(a) attribution forecast date or 14 days after the date that NMFS receives a copy of the arrangement, whichever is later, for arrangements copies of which are received by NMFS after the date NMFS determines the pre-Section 113(a) attribution forecast date.

(3) NMFS will determine whether an arrangement satisfies the requirements of Section 113(a) of Public Law 112–55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012 (continued by Public Law 113–6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013), for the attribution of bigeye tuna to the longline fishery of American Samoa, Guam, or

the Commonwealth of the Northern Mariana Islands according to the following criteria:

(i) Vessels included under the arrangement must be registered for use with valid permits issued under the Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region;

(ii) The arrangement must not impose any requirements regarding where the vessels included in the arrangement must fish or land their catch;

(iii) The arrangement must be signed by the owners of all the vessels included in the arrangement or their designated representative(s);

(iv) The arrangement must be signed by an authorized official of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands or his or her designated representative(s); and

(v) The arrangement must be funded by deposits to the Western Pacific Sustainable Fisheries Fund in support of fisheries development projects identified in the Marine Conservation Plan of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands adopted pursuant to section 204 of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) NMFS will notify the parties to the arrangement or their designated representative(s) within 14 days of receiving a copy of the arrangement, if the arrangement does not meet the criteria specified in paragraph (g)(3) of this section.

[FR Doc. 2013-23106 Filed 9-20-13; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 001005281-0369-02]

RIN 0648-XC868

#### Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; 2013-2014 Accountability Measure and Closure for Gulf King Mackerel in Western Zone

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements an accountability measure (AM) for commercial king mackerel in the western zone of the Gulf of Mexico

(Gulf) exclusive economic zone (EEZ) through this temporary final rule. NMFS has determined that the commercial annual catch limit (ACL) (equal to the commercial quota) for king mackerel in the western zone of the Gulf EEZ will have been reached by September 20, 2013. Therefore, NMFS closes the western zone of the Gulf to commercial king mackerel fishing in the EEZ. This closure is necessary to protect the Gulf king mackerel resource.

**DATES:** The closure is effective noon, local time, September 20, 2013, until 12:01 a.m., local time, on July 1, 2014.

**FOR FURTHER INFORMATION CONTACT:** Susan Gerhart, 727-824-5305, email: [Susan.Gerhart@noaa.gov](mailto:Susan.Gerhart@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, and cobia) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial ACL (commercial quota) for the Gulf migratory group king mackerel in the western zone is 1,071,360 lb (485,961 kg) (76 FR 82058, December 29, 2011), for the current fishing year, July 1, 2013, through June 30, 2014.

Regulations at 50 CFR 622.388(a)(1) require NMFS to close the commercial sector for Gulf migratory group king mackerel in the western zone when the ACL (quota) is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. Based on the best scientific information available, NMFS has determined the commercial ACL (commercial quota) of 1,071,360 lb (485,961 kg) for Gulf migratory group king mackerel in the western zone will be reached by September 20, 2013. Accordingly, the western zone is closed to commercial fishing for Gulf group king mackerel effective noon, local time, September 20, 2013, through June 30, 2014, the end of the fishing year. The Gulf group king mackerel western zone begins at the United States/Mexico border (near Brownsville, Texas) and continues to the boundary between the eastern and western zones at 87°31.1' W. long., which is a line directly south from the Alabama/Florida boundary.

Except for a person aboard a charter vessel or headboat, during the closure,

no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for or retain Gulf group king mackerel in the EEZ in the closed zone (50 CFR 622.384(e)(1)). A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.382(a)(1)(ii) and (a)(2), provided the vessel is operating as a charter vessel or headboat (50 CFR 622.384(e)(2)). A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zone, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor (50 CFR 622.384(e)(3)).

#### Classification

This action responds to the best scientific information available. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule implementing the commercial ACL (commercial quota) and the associated requirement for closure of the commercial harvest when the ACL (quota) is reached or projected to be reached has already been subject to notice and comment, and all that remains is to notify the public of the closure.

Additionally, allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the king mackerel stock because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the

30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.384(e)(3) and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 18, 2013.

**Emily H. Menashes,**

*Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 130403321-3803-02]

RIN 0648-BD16

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Regulatory Amendment 19

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement management measures for black sea bass described in Regulatory Amendment 19 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared by the South Atlantic Fishery Management Council (Council). Regulatory Amendment 19 specifies the acceptable biological catch (ABC), and the amendment and this final rule revise the optimum yield (OY), the commercial and recreational annual catch limits (ACLs), and the recreational annual catch target (ACT) for black sea bass harvested in or from the South Atlantic exclusive economic zone (EEZ). This final rule also establishes an annual prohibition on the use of black sea bass pots in the South Atlantic from November 1 through April 30. The purpose of this rule is to provide socio-economic benefits to snapper-grouper fishermen and communities that utilize the snapper-grouper resource, while maintaining fishing mortality at sustainable levels according to the best scientific information available. The rule also prevents interactions between black sea bass pot gear and whales listed under the Endangered Species Act (ESA) during periods of large whale migrations

and during the northern right whale calving season off of the southeastern coast.

**DATES:** This rule is effective October 23, 2013 except for the amendments to §§ 622.190(a)(5) and 622.193(e)(2) which are effective September 23, 2013.

**ADDRESSES:** Electronic copies of Regulatory Amendment 19, which includes an environmental assessment, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf/pdfs/SGRegAmend19.pdf>.

**FOR FURTHER INFORMATION CONTACT:** Rick DeVictor, Southeast Regional Office, telephone: 727-824-5305, or email: [rick.devictor@noaa.gov](mailto:rick.devictor@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic, which includes black sea bass, is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On July 2, 2013, NMFS published a proposed rule for Regulatory Amendment 19 and requested public comment (78 FR 39700). The proposed rule and Regulatory Amendment 19 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

#### Management Measures Contained in This Final Rule

This final rule revises the commercial and recreational ACLs for black sea bass harvested in or from the South Atlantic EEZ and establishes an annual prohibition on the use of black sea bass pots in the South Atlantic from November 1 through April 30.

#### Black Sea Bass ACLs

For black sea bass, Regulatory Amendment 19 changes the ACL and revises the ACL and OY formula from  $OY = ABC = ACL$  to  $OY = ACL$ . For 3 consecutive fishing years beginning in 2013-2014, and including 2014-2015 and 2015-2016, the Council set the ACL value equal to the 2015-2016 fishing year ABC value, which is 1,814,000 lb (822,817 kg). Beginning with the 2016-2017 fishing year, the stock ACL value would be decreased to the yield at 75 percent  $F_{MSY}$ , which equals 1,756,450 lb (796,712 kg), round weight.

This final rule revises the commercial ACL from the current 309,000 lb (140,160 kg), gutted weight, 364,620 lb

(165,389 kg), round weight, to: 661,034 lb (299,840 kg), gutted weight, 780,020 lb (353,811 kg), round weight for the 2013-2014, 2014-2015, and 2015-2016 fishing years; and 640,063 lb (290,328 kg), gutted weight, 755,274 lb (342,587 kg), round weight, for the 2016-2017 fishing year and subsequent fishing years. The recreational ACL is revised from the current 409,000 lb (185,519 kg), gutted weight; 482,620 lb (218,913 kg), round weight, to: 876,254 lb (397,462 kg), gutted weight, 1,033,980 lb (469,005 kg), round weight for the 2013-2014, 2014-2015, and 2015-2016 fishing years; and 848,455 lb (384,853 kg), gutted weight, 1,001,177 lb (454,126 kg), round weight, for the 2016-2017 fishing year and subsequent fishing years.

#### Black Sea Bass Pot Gear Seasonal Prohibition

This rule establishes a prohibition on the use of black sea bass pots from November 1 through April 30, each year. The large whale migration period and the right whale calving season in the South Atlantic extends from approximately November 1 through April 30, each year. Since 2010, black sea bass harvest levels have reached the commercial ACL, triggering accountability measures (AMs) to close the commercial sector. Because these in-season commercial AM closures have occurred prior to November 1, actions to prevent black sea bass pot gear from being in the water during the higher whale concentration time period have been unnecessary. However, NMFS has determined that the increase in the commercial ACL contained in this rule could extend the commercial black sea bass fishing season beyond November 1 and into a time period when a higher concentration of endangered whales are known to migrate through black sea bass fishing grounds.

The seasonal sea bass pot prohibition is a precautionary measure to prevent interactions between black sea bass pot gear and whales during large whale migrations and during the right whale calving season off the U.S. southeastern coast. During this closure, no person is allowed to harvest or possess black sea bass in or from the South Atlantic EEZ either with sea bass pots or from a vessel with sea bass pots on board. In addition, sea bass pots must be removed from the water in the South Atlantic EEZ before November 1, and may not be on board a vessel in the South Atlantic EEZ during this closure.

### Additional Management Measures Contained in Regulatory Amendment 19

Regulatory Amendment 19 also revises the black sea bass recreational ACT. The black sea bass recreational ACT was set at 357,548 lb (162,181 kg) gutted weight, 421,907 lb (191,374 kg), round weight, in the Amendment 18A final rule (75 FR 82280, December 30, 2010). Regulatory Amendment 19 increases the recreational ACT to 766,021 lb (347,461 kg), gutted weight, 903,905 lb (410,004 kg), round weight, for the 2013–2014, 2014–2015, and 2015–2016 fishing years and to 741,719 lb (336,438 kg), gutted weight, 875,228 (396,997 kg), round weight, for the 2016–2017 fishing year and subsequent fishing years. Because the ACT is not used to trigger an AM, it is not codified in the regulatory text.

### Comments and Responses

A total of nine comments were received on the proposed rule for Regulatory Amendment 19 from fishers, a fishing association, three non-governmental organizations, and a Federal agency. Two commenters supported the increase in the black sea bass ACL. Three commenters supported the seasonal prohibition on the use of black sea bass pots. The Federal agency stated it had no comment. Specific comments related to the actions contained in Regulatory Amendment 19 and the proposed rule, and NMFS' respective responses, are summarized and responded to below.

*Comment 1:* Black sea bass should be open year-round instead of having a sector close in-season as a result of AMs being triggered.

*Response:* The Magnuson-Stevens Act requires the Council and NMFS to set ACLs and establish measures to ensure their accountability (AMs). The Council and NMFS established an ACL for black sea bass that is further divided for the recreational and commercial sectors, with AMs to close the harvest when each sector's ACL is reached or projected to be reached. The Council and NMFS have determined that the in-season sector closures (AMs) are necessary to minimize potential overages of the ACLs and to prevent overfishing.

*Comment 2:* The commercial harvest of black sea bass using pots should be open year-round, as long as the commercial ACL has not been met. Regulations that are "whale friendly" have already been implemented, including a requirement to return pots to shore at the conclusion of each trip and a limit of 35 pots per vessel.

*Response:* The Council and NMFS have determined that a seasonal black sea bass pot prohibition, along with the existing regulations related to pot gear, are necessary to prevent interactions between black sea bass pot gear and whales during periods of large whale migrations and during the right whale calving season off the U.S. southeastern coast. The large whale migration period and the right whale calving season in the South Atlantic occurs from approximately November 1 through April 30, each year. Since 2010, black sea bass harvest levels have reached the commercial ACL during the fishing year, thereby triggering in-season AMs to close the commercial sector prior to November 1. Therefore, Council actions to prevent black sea bass pot gear from being in the water during periods of higher whale concentrations have been unnecessary. However, NMFS has determined that the increase in the commercial ACL implemented through this rule could extend the commercial black sea bass fishing season beyond November 1, and into a period when a higher concentration of endangered whales are known to migrate through black sea bass fishing grounds. NMFS notes that if the commercial ACL is not reached or projected to be reached by November 1 of each year, then harvest of black sea bass by the commercial sector may continue with hook-and-line gear until the commercial ACL is reached.

According to the NMFS List of Fisheries, black sea bass pots are considered to pose an entanglement risk to marine mammals. The South Atlantic black sea bass commercial pot component of the snapper-grouper fishery is included in the Atlantic mixed species trap/pot fisheries grouping, which is classified as a Category II in the proposed rule for the 2013 List of Fisheries (78 FR 23708, April 22, 2013). Category II means that there is an occasional incidental mortality and serious injury of marine mammals associated with that specific fishing gear type. Therefore, the seasonal black sea bass pot seasonal prohibition implemented through this rule is a precautionary measure to prevent interactions between black sea bass pot gear and whales during periods of large whale migrations and during the right whale calving season off the U.S. southeastern coast.

### Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of black sea bass in the

South Atlantic and is consistent with Regulatory Amendment 19, the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared for this action. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comment, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The FRFA follows.

No public comments specific to the IRFA were received and, therefore, no public comments are addressed in this FRFA. No changes in the final rule were made in response to public comments.

On June 20, 2013, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). The rule increased the size standard for Finfish Fishing from \$4.0 to \$19.0 million, Shellfish Fishing from \$4.0 to \$5.0 million, and Other Marine Fishing from \$4.0 to \$7.0 million. The SBA did not revise the size standard for for-hire fishing and thus it remains at \$7 million. Pursuant to the Regulatory Flexibility Act, and prior to SBA's June 20, 2013, final rule, an IRFA was developed for this action using SBA's former size standards. Subsequent to the June 20, 2013 rule, NMFS has reviewed the FRFA prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. NMFS has determined that the new size standards do not affect the analyses prepared for this action.

NMFS agrees that the Council's choice of preferred alternatives would best achieve the Council's objectives for Regulatory Amendment 19 while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities. The preamble of the proposed rule and this rule provide a statement of the need for and objectives of this final rule, and it is not repeated here.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this rule.

NMFS expects this final rule to directly affect commercial fishermen and for-hire vessel operators in the South Atlantic snapper-grouper fishery. The SBA established small entity size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in fish harvesting is classified as a small business if independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of \$19.0 million (NAICS code 114111, finfish fishing) for all of its affiliated operations worldwide. For for-hire vessels, all qualifiers apply except that the annual receipts threshold is \$7.0 million (NAICS code 713990, recreational industries).

From 2007 through 2011, an annual average of 240 vessels with valid commercial South Atlantic snapper-grouper permits landed at least 1 lb (0.45 kg) of black sea bass. These vessels generated annual dockside revenues of approximately \$4.0 million (2011 dollars) from all species caught on the same commercial trips as black sea bass, of which about \$1.0 million (2011 dollars) were attributable to black sea bass. Each commercial vessel, therefore, generated an annual average of approximately \$17,000 in gross revenues, of which \$4,000 were from black sea bass. Based on revenue information, all commercial vessels affected by the rule can be considered small entities.

From 2007 through 2012, an annual average of 1,855 vessels had a valid South Atlantic Charter/Headboat for Snapper-Grouper permit to operate in the for-hire component of the recreational sector in the snapper-grouper fishery. As of April 23, 2013, 1,485 vessels held South Atlantic Charter/Headboat for Snapper-Grouper permits and about 75 of those are estimated to have operated as headboats in 2013. The for-hire fleet consists of charter boats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. Average annual revenues (2011 dollars) per charter boat are estimated to be \$126,032 for Florida vessels, \$53,443 for Georgia vessels, \$100,823 for South Carolina vessels, and \$101,959 for North Carolina vessels. For headboats, the corresponding estimates are \$209,507 for Florida vessels and \$153,848 for vessels in the other three states. For state headboat estimates other than Florida, the headboat sample sizes were small and therefore providing more detailed revenue estimate information on a state-by-state basis would potentially disclose sensitive

financial information and so aggregated economic information is provided. Based on these average revenue figures, all for-hire operations that would be affected by the rule can be considered small entities.

NMFS expects the final rule to directly affect all federally-permitted commercial vessels harvesting black sea bass and for-hire vessels that operate in the South Atlantic snapper-grouper fishery. All directly affected entities have been determined, for the purpose of this analysis, to be small entities. Therefore, NMFS determines that this final rule will affect a substantial number of small entities.

Because NMFS determines that all entities expected to be affected by the actions in this final rule are small entities, the issue of disproportional effects on small versus large entities does not arise in the present case.

This final rule will increase the black sea bass stock ACL from its current level of 847,000 lb (384,193 kg), round weight, to 1,814,000 lb (822,817 kg), round weight, for the 2013–2014, 2014–2015, and 2015–2016 fishing years and to 1,756,450 lb (796,713 kg), round weight, for the 2016–2017 fishing year, and subsequent fishing years. In addition, this final rule will prohibit retention, possession, and fishing for black sea bass using black sea bass pot gear, from November 1 through April 30, each year.

Increasing the black sea bass stock ACL will also increase the commercial and recreational sector ACLs based on the current allocation ratio of 43 percent for the commercial sector and 57 percent for the recreational sector. Current NMFS modeling projections suggest that, even with relatively large increases in the commercial ACL, the commercial fishing season for black sea bass would likely close before the end of each fishing year. If the commercial ACL is fully harvested each year, the commercial sector will generate additional revenues (in 2011 dollars) of about \$939,000 in each of the 2013–2014, 2014–2015, and 2015–2016 fishing years and approximately \$883,000 in the 2016–2017 fishing year and subsequent fishing years. For the 2013–2014, 2014–2015, and 2015–2016 fishing years, the net present value of increased revenues to the commercial sector will be approximately \$2.5 million. As a result of relatively large increases in commercial revenues, profits to commercial vessels will likely increase. These revenue estimates are for the short-term as there is increasing variability in the conditions beyond 3 years which would therefore not result

in accurate estimates of revenue beyond 3 years.

The November through April prohibition on the use of black sea bass pots for harvesting black sea bass is intended to prevent interactions between black sea bass pot gear and whales listed under the ESA during large whale migrations and during the right whale calving season off the southeastern coast. In theory, this prohibition is expected to negatively affect the revenues and profits of the 32 commercial vessels which currently possess black sea bass pot endorsements to their Federal commercial snapper-grouper permits. Since the 2010–2011 fishing season, however, commercial fishing for black sea bass has closed before November 1 each year. Thus, the November through April prohibition on the use of black sea bass pots will mainly constrain the revenue increases associated with an increased commercial ACL for 32 commercial vessels which possess black sea bass pot endorsements.

However, the seasonal black sea bass pot prohibition will greatly benefit fishermen using other gear types, such as vertical lines, because their fishing season will be extended as a result of this rule. Despite the ACL increases, closures to commercial (and recreational) harvest of black sea bass are still projected to occur as a result of the sectors reaching their respective ACLs during the fishing year. Therefore, revenues forgone by vessels using black sea bass pots will likely be gained by vessels using other gear types. Thus, the black sea bass pot prohibition will mainly have distributional effects within the commercial sector, with the overall industry revenues and likely profits expected to increase.

NMFS modeling projections suggest that even with large ACL increases, the recreational sector for black sea bass will experience fishing season closures during the fishing year as a result of the sector reaching the recreational ACL. These closures will likely occur starting in December of each fishing year. Relative to the no action alternative, however, the ACL increases will extend the recreational fishing season each year, allowing for-hire vessels to take more fishing trips. These additional trips will increase total for-hire vessel profits (in 2011 dollars) by approximately \$354,000 each year starting with the 2013–2014 fishing year, of which about \$234,000 will be for headboats and \$120,000 for charter boats. Over the 2013–2014, 2014–2015, and 2015–2016 fishing years, the net present value of these profit increases will be approximately \$930,000, of

which \$614,000 will be for headboats and \$316,000 for charter boats. These revenue estimates are for the short-term as there is increasing variability in the conditions beyond 3 years which would therefore not result in accurate estimates of revenue beyond 3 years.

Additionally, Regulatory Amendment 19 will revise the recreational ACT. The formula for calculating the ACT from the ACL will not change, but the ACT level will increase with an increase in the ACL. Previously, and in this final rule, the recreational ACT has been used by the Council and NMFS to monitor recreational harvest and not as a trigger for AMs. Thus the revised ACT is expected to have no effects on the revenues and profits of for-hire vessels. If, in the future, the ACT is used to trigger AMs, the ACT increase accompanying the ACL increase will reduce the probability of triggering an AM associated with an in-season closure.

The following discussion analyzes the alternatives that were not selected as preferred by the Council.

Four alternatives, including the preferred alternative, were considered for revising the stock ACL for black sea bass. The first alternative, the no action alternative, would retain the current ACL of 847,000 lb (384,193 kg), round weight. In principle, this alternative would have no short-run effects on the revenues and profits of commercial and for-hire vessels. However, with the developing derby conditions in the commercial and recreational sectors that harvest black sea bass, both the commercial and recreational fishing seasons would continue to shorten over time, eventually adversely affecting the revenues and profits of commercial and for-hire vessels. Moreover, this alternative would result in forgoing the economic benefits expected of the preferred alternative to increase the stock ACL. In addition to the economic rationale just presented, the Council noted that this alternative would not be based on the best available science resulting from the recent stock assessment update for black sea bass that would allow for a higher ACL. As for the November through April black sea bass pot prohibition introduced in the preferred alternative, the Council considered it important for addressing the need to prevent interactions between black sea bass pot gear and ESA-listed whales during large whale migrations and right whale calving season. However, the Council recognized that the black sea bass pot prohibition may be modified in the future and is therefore considering a modification to the prohibition in

Regulatory Amendment 16 to the FMP which is currently under development.

The second alternative to increase the stock ACL would increase the ACL from its current level of 847,000 lb (384,193 kg), round weight, to 2,133,000 lb (967,513 kg), round weight, in the 2103–2014 fishing year, 1,992,000 lb (903,557 kg), round weight, in the 2014–2015 fishing year, and 1,814,000 lb (822,817 kg), round weight, in the 2015–2016 fishing year and beyond. In addition, this alternative would prohibit the use of black sea bass pots for the same period as the preferred alternative and increase the recreational ACT. This alternative would result in higher revenues and profits for commercial and for-hire vessels than the preferred alternative mainly because it would provide for higher ACLs in the 2013–2014 and 2014–2015 fishing years. Although the effects of this alternative on commercial vessels using black sea bass pots would be the same as those of the preferred alternative, the effects on commercial vessels using other gear types would be different. With the seasonal black sea bass pot prohibition in place, the 2013–2014 and 2014–2015 fishing seasons for users of other gear types would be longer, thus affording them higher revenues and profits than the preferred alternative. A negative consequence of this alternative is its higher likelihood (relative to the preferred alternative) of overfishing the stock over time. As has been experienced in the snapper-grouper fishery, overfishing requires more restrictive regulations with their associated adverse consequences on the revenues and profits of commercial and for-hire vessels. The Council therefore rejected this alternative because it would pose a high probability of overfishing the black sea bass stock. The revised recreational ACT levels would have no direct effects on the revenues and profits of for-hire vessels.

The third alternative would increase the stock ACL from its current level of 847,000 lb (384,193 kg), round weight, to 1,756,450 lb (796,713 kg), round weight, in the 2013–2014 fishing year and beyond. In addition, this alternative would similarly prohibit the seasonal use of black sea bass pots, like the preferred alternative, and increase the recreational ACT. This alternative would maintain the same ACL starting in the 2013–2014 fishing season but at lower levels in the initial 3 years than the preferred alternative. Thus, this alternative would be expected to result in lower revenues and profits than the preferred alternative. The prohibition on the use of black sea bass pots would extend the overall commercial fishing

season but for a shorter duration than what would be expected under the preferred alternative. Revenue and profit increases to vessels using other gear types would be less than those under the preferred alternative. The Council did not select this as the preferred alternative because it would provide for lower economic benefits than the preferred alternative. As with the preferred alternative, the revised recreational ACT level would have no direct effects on the revenues and profits of for-hire vessels.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all interested parties.

The NOAA Assistant Administrator for Fisheries (AA) finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for the revised commercial and recreational ACLs located at §§ 622.190(a)(5) and 622.193(e)(2) in this final rule. A 30-day delay in effectiveness of these management measures would be contrary to the public interest because the commercial and recreational sectors could reach their respective ACLs sooner than anticipated, and possibly within the 30-day delay period, without the increase in the ACLs. As described in Regulatory Amendment 19, with the implementation of the revised ACLs in this rule, the black sea bass commercial sector is projected to reach its ACL by October 10, 2013, and the recreational sector is projected to reach its ACL by August 29, 2013. If these revised ACLs are not implemented immediately, the commercial and recreational sectors could meet the current ACLs triggering unnecessary in-season closures and thus undermine the intent of the rule. To avoid in-season closures and re-openings of the commercial and recreational sectors later in the season based on the increased ACLs, which can be both burdensome and confusing to the public, these ACLs need to be effective upon publication of this final rule. The increased commercial and recreational ACLs will allow for additional harvest of black sea bass and will provide the opportunity for fishermen to achieve the OY for the black sea bass component of the

snapper-grouper fishery, as required by National Standard 1 of the Magnuson-Stevens Act. This will help maximize socio-economic opportunities for black sea bass fishers.

For these reasons, the AA waives the 30-day delay in effectiveness of this final rule for §§ 622.190(a)(5) and 622.193(e)(2).

#### List of Subjects in 50 CFR Part 622

Fisheries, Fishing, South Atlantic, Black Sea Bass.

Dated: September 18, 2013.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

#### PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.183, paragraph (b)(6) is added to read as follows:

##### § 622.183 Area and seasonal closures.

\* \* \* \* \*

(b) \* \* \*

(6) *Seasonal closure of the commercial black sea bass pot component of the snapper-grouper*

*fishery.* From November 1 through April 30, each year, the commercial black sea bass pot component of the snapper-grouper fishery is closed. During this closure, no person may harvest or possess black sea bass in or from the South Atlantic EEZ either with sea bass pots or from a vessel with sea bass pots on board. In addition, sea bass pots must be removed from the water in the South Atlantic EEZ before November 1, and may not be on board a vessel in the South Atlantic EEZ during this closure.

■ 3. In § 622.190, paragraph (a)(5) is revised to read as follows:

##### § 622.190 Quotas.

\* \* \* \* \*

(a) \* \* \*

(5) *Black sea bass.* (i) For the 2013–2014, 2014–2015, and 2015–2016 fishing years—661,034 lb (299,840 kg), gutted weight; 780,020 lb (353,811 kg), round weight.

(ii) For the 2016–2017 fishing year and subsequent fishing years—640,063 lb (290,328 kg), gutted weight; 755,274 lb (342,587 kg), round weight.

\* \* \* \* \*

■ 4. In § 622.193, paragraph (e)(2) is revised to read as follows:

##### § 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

\* \* \* \* \*

(e) \* \* \*

(2) *Recreational sector.* (i) If recreational landings for black sea bass, as estimated by the SRD, are projected

to reach the recreational ACL specified in paragraph (e)(2)(ii) of this section then the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year. On and after the effective date of such a notification, the bag and possession limit is zero. This bag and possession limit applies in the South Atlantic on board a vessel for which a valid Federal charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

(ii) The recreational ACL for black sea bass is 876,254 lb (397,462 kg), gutted weight, 1,033,980 lb (469,005 kg), round weight for the 2013–2014, 2014–2015, and 2015–2016 fishing years and 848,455 lb (384,853 kg), gutted weight, 1,001,177 lb (454,126 kg), round weight for the 2016–2017 fishing year and subsequent fishing years.

(iii) If recreational landings for black sea bass, as estimated by the SRD, exceed the ACL, the AA will file a notification with the Office of the Federal Register, to reduce the recreational ACL the following fishing year by the amount of the overage in the prior fishing year, unless the SRD determines that no overage adjustment is necessary based on the best scientific information available.

\* \* \* \* \*

[FR Doc. 2013–23093 Filed 9–20–13; 8:45 am]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register

Vol. 78, No. 184

Monday, September 23, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

#### 6 CFR Part 5

[Docket No. DHS 2013–0021]

#### Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/U.S. Customs and Border Protection—019 Air and Marine Operations Surveillance System (AMOSS) System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the “Department of Homeland Security/U.S. Customs and Border Protection—019 Air and Marine Operations Surveillance System (AMOSS) System of Records” and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

**DATES:** Comments must be received on or before October 23, 2013.

**ADDRESSES:** You may submit comments, identified by docket number DHS 2013–0021, by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

*Instructions:* All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For general questions please contact: Laurence Castelli, (202) 325–0280, Privacy Officer, U.S. Customs and Border Protection, Washington, DC 20229. For privacy issues please contact: Jonathan R. Cantor (202–343–1717), Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP) proposes to establish a new DHS system of records titled, “DHS/CBP—019 Air and Marine Operations Surveillance System (AMOSS) System of Records.”

The AMOSS System of Records Notice (SORN) is being published because AMOSS stores personally identifiable information in a system of records. AMOSS is a sophisticated radar processing system that supports the concerted and cooperative effort of air, land, and sea vehicles; field offices; and command and control centers staffed by law enforcement officers (LEO), detection enforcement officers (DEO), pilots, crew, and Air and Marine Operations Center (AMOC) support staff in monitoring approaches to the U.S. border to detect illicit trafficking and direct interdiction actions, as appropriate. AMOSS also supports domestic operations in conjunction with other domestic law enforcement agencies by tracking domestic flights, as well as providing air traffic monitoring for air defense purposes. By processing a collection of external data imposed over a zooming-capable screen, AMOSS provides a real-time picture of air activity over a wide portion of North America, thus allowing system operators to discriminate between normal and suspicious air, ground, and marine vehicle movement. Much of the external data processed by AMOSS does not contain Personally Identifiable Information (PII) and is supplied to AMOSS by means of networked external sources. For instance, global positioning systems (GPS), maps, datasets from radar plot data, track data, and flight

plan data are all incorporated to enhance the system operator’s ability to discriminate between normal and suspicious aviation movement.

The collection of information in AMOSS is authorized primarily by the following authorities: 6 U.S.C. 202; the Tariff Act of 1930, as amended, including 19 U.S.C. 1590; 19 U.S.C. 2075(b)(2)(B)(3); the Immigration and Nationality Act (INA), 8 U.S.C. 1101, *et seq.*, including 8 U.S.C. 1103, 1225, and 1324; and the Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208; Presidential Directive 47/Homeland Security Presidential Directive 16 (NSPD–47/HSPD–16); and DHS Delegation No. 7010.3 (May 11, 2006).

No exemption shall be asserted with respect to aircraft data collected from the FAA that is maintained in AMOSS. However, this FAA data may be shared with law enforcement and/or intelligence agencies pursuant to the above routine uses. The Privacy Act requires DHS maintain an accounting of the disclosures made pursuant to all routine uses. Disclosing the fact that a law enforcement or intelligence agency has sought particular records may affect ongoing law enforcement or intelligence activity. As such, pursuant to 5 U.S.C. 552a(j)(2), DHS will claim an exemption from (c)(3); (e)(8); and (g)(1) of the Privacy Act of 1974, as amended, as is necessary and appropriate to protect this information. Further, DHS will claim exemption from subsection (c)(3) of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(k)(2) as is necessary and appropriate to protect this information.

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted all other AMOSS data from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), and (e)(8); (f); and (g)(1). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2), has exempted this non-FAA source data in AMOSS from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). When a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary

systems of records from which they originated and claims any additional exemptions set forth here.

## II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which federal government agencies collect, maintain, use, and disseminate personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/U.S. Customs and Border Protection—019 Air and Marine Operations Surveillance System (AMOSS) System of Records. Some information in DHS U.S. Customs and Border Protection—019 Air and Marine Operations Surveillance System (AMOSS) System of Records relates to official DHS national security, law enforcement, immigration, and intelligence activities. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS's ability to obtain information from third parties and other sources; and to protect the privacy of third parties. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

In appropriate circumstances, when compliance would not appear to

interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis. Moreover, no exemption shall be asserted with respect to information maintained in the system as it relates to aircraft data collected from the FAA, aside from the accounting of disclosures with law enforcement and/or intelligence agencies pursuant to the routine uses in this SORN.

A notice of system of records for DHS U.S. Customs and Border Protection—019 Air and Marine Operations Surveillance System (AMOSS) System of Records is also published in this issue of the **Federal Register**.

### List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

### PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

**Authority:** 6 U.S.C. 101 et seq.; Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. Add paragraph "72" at the end of Appendix C to Part 5 to read as follows:

#### Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

\* \* \* \* \*

72. The DHS/U.S. Customs and Border Protection—019 Air and Marine Operations Surveillance System (AMOSS) System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/U.S. Customs and Border Protection—019 Air and Marine Operations Surveillance System (AMOSS) System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; national security; and intelligence activities. The DHS/U.S. Customs and Border Protection—019 Air and Marine Operations Surveillance System (AMOSS) System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies.

(a) No exemption shall be asserted with respect to aircraft data collected from the Federal Aviation Administration (FAA) that is maintained in AMOSS. However, this FAA data may be shared with law enforcement

and/or intelligence agencies pursuant to the routine uses listed in the SORN. The Privacy Act requires DHS to maintain an accounting of the disclosures made pursuant to all routine uses. Disclosing the fact that a law enforcement or intelligence agency has sought particular records may affect ongoing law enforcement or intelligence activity. As such, pursuant to 5 U.S.C. 552a(j)(2), DHS will claim an exemption from (c)(3); (e)(8); and (g)(1) of the Privacy Act of 1974, as amended, as is necessary and appropriate to protect this information. Further, DHS will claim exemption from subsection (c)(3) of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(k)(2) as is necessary and appropriate to protect this information.

(b) The Secretary of Homeland Security, pursuant to exemption 5 U.S.C. 552a(j)(2) has exempted all other AMOSS data from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), and (e)(8); (f), and (g)(1). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2), has exempted this non-FAA source data in AMOSS from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f).

(c) When a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

(d) Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(1) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(2) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative

burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(3) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(4) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(5) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(6) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, potential witnesses, and confidential informants.

(7) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(8) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(9) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: August 6, 2013.

**Jonathan R. Cantor,**

*Acting Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. 2013-22691 Filed 9-20-13; 8:45 am]

**BILLING CODE 4411-14-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA-2013-0822; Directorate Identifier 2013-SW-004-AD]**

**RIN 2120-AA64**

#### **Airworthiness Directives; Eurocopter France Helicopters**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede an existing airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS350B3 helicopters with a certain modification (MOD) installed. The existing AD currently requires installing two placards and revising the Rotorcraft Flight Manual (RFM). The AD also requires certain checks and inspecting and replacing, if necessary, all four laminated half-bearings (bearings). Since we issued that AD, we have determined that the unsafe condition applies to additional model helicopters, and that a recently developed Eurocopter modification should be a required terminating action for the repetitive checks required by the AD. This proposed AD would retain the existing AD requirements, require certain modifications which would be terminating action for the airspeed limitations, and would add certain helicopter models to the bearing inspection with a different inspection interval. The proposed actions are intended to prevent vibration due to a failed bearing, failure of the tail rotor, and subsequent loss of control of the helicopter.

**DATES:** We must receive comments on this proposed AD by November 22, 2013.

**ADDRESSES:** You may send comments by any of the following methods:

- **Federal eRulemaking Docket:** Go to <http://www.regulations.gov>. Follow the online instructions for sending your comments electronically.
- **Fax:** 202-493-2251.
- **Mail:** Send comments to the U.S. Department of Transportation, Docket

Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

- **Hand Delivery:** Deliver to the "Mail" address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### **Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the foreign authority's AD, the economic evaluation, any comments received and other information. The street address for the Docket Operations Office (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641-0000 or (800) 232-0323; fax (972) 641-3775; or at <http://www.eurocopter.com/techpub>. You may review service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

#### **FOR FURTHER INFORMATION CONTACT:**

Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222-5110; email [robert.grant@faa.gov](mailto:robert.grant@faa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will

consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

### Discussion

On April 24, 2013, we issued AD 2012–25–04, Amendment 39–17285 (78 FR 24041) for Eurocopter Model AS350B3 helicopters with MOD 07 5601 installed. AD 2012–25–04 requires, before further flight, installing two placards on the instrument panel and revising the RFM to reduce the Velocity Never Exceed ( $V_{NE}$ ) indicated airspeed (IAS) limitation. It also requires, before further flight and thereafter after each flight, visually checking all visible faces of the pressure side of the bearings for separation, a crack, or an extrusion, and replacing the four bearings if there is an extrusion or if there is a separation or a crack greater than 5 millimeters (.196 inches). AD 2012–25–04 also requires checking the suction side of the bearings for extrusions and replacing all four bearings if an extrusion is present. Lastly, AD 2012–25–04 requires performing a one-time disassembly and inspection of the bearings for a separation, a crack, or an extrusion, and replacing the four bearings if there is a separation, crack, or extrusion. AD 2012–25–04 superseded Emergency AD (EAD) No. 2012–21–51, dated October 17, 2012 (EAD 2012–21–51), which had the same requirements but which only applied to helicopters with certain part-numbered half-bearings and tail rotor blades.

AD 2012–25–04 and EAD 2012–21–51 were prompted by Emergency AD No. 2012–0207–E, dated October 5, 2012 (EAD 2012–0207–E), and Emergency AD No. 2012–0217–E, dated October 19, 2012 (EAD 2012–0217–E), issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA advised of premature failures of the bearings, three cases of vibrations originating from the tail rotor due to premature failure of the bearings installed with certain tail rotor blades, and an accident. EAD 2012–0217–E supersedes EAD 2012–0207–E to correct an inconsistency where the new airspeed limitation defined in the placards and the RFM were stated in both true airspeed (TAS) and indicated airspeed (IAS). EAD 2012–0217–E retains some of the requirements of EAD 2012–0207–E, removes the airspeed limitations defined in TAS, and requires inserting a temporary engine health

check procedure into the RFM. The actions required by AD 2012–25–04 and EAD 2012–21–51 are intended to prevent vibration due to a failed bearing, failure of the T/R, and subsequent loss of control of the helicopter.

### Actions Since Existing AD Was Issued

After we issued EAD No. 2012–21–51, dated October 17, 2012, EASA issued EAD No. 2012–0257–E, dated December 5, 2012 (EAD 2012–0257–E), for Model AS350B, AS350BA, AS350BB, AS350B1, AS350B2, AS350B3 without Modification (MOD) 07 5601, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters. EAD 2012–0257–E describes the previous issues with the bearings on the AS350B3 helicopters, and states that the criticality of the bearing failures should apply to all AS355 and AS350 helicopters, although service experience has not demonstrated premature deterioration of the bearings on these model helicopters. EAD 2012–0257–E requires repetitive post-flight checks of the bearings, similar to the checks required by EAD 2012–0217–E.

EASA then superseded EAD 2012–0217–E with EASA AD No. 2013–0029, dated February 8, 2013 (AD 2013–0029), to correct an unsafe condition for Eurocopter Model AS 350 B3 helicopters modified by MOD 07 5601, except for helicopters modified by MOD 07 5606 in production. EASA advises that Eurocopter has designed MOD 07 5606, which restores the tail rotor dynamic load level to that on helicopters before installation of MOD 07 5601 and eliminates the modified loading conditions of bearings which caused the intensified deterioration and reported failures. For these reasons, EASA AD 2013–0029 requires incorporation of MOD 07 5606 as a terminating action.

### FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other helicopters of the same type design.

### Related Service Information

We reviewed Eurocopter Service Bulletin (SB) No. AS350–01.00.66, Revision 1, dated February 15, 2013 (SB

AS350–01.00.66), which describes procedures for removing the additional chin weights installed on the tail rotor, installing a load compensator, and modifying the electrical system installation, to reduce the dynamic loads on the tail rotor. Eurocopter refers to the procedures in this SB as MOD 07 5606. SB AS350–01.00.66 only applies to helicopters with MOD 07 5601 installed.

We reviewed one Eurocopter Emergency Alert Service Bulletin (EASB) with two numbers: No. 01.00.65 for the Model AS350B3 helicopters and No. 01.00.24 for the non-FAA type certificated Model AS550C3 helicopters (EASB 01.00.65). EASB 01.00.65 is Revision 3, dated February 4, 2013. EASB 01.00.65 specifies installing a placard on the instrument panel and revising the RFM to limit airspeed to 100 knots IAS, revising the RFM to include a procedure in case of in-flight vibrations originating in the tail rotor and an “engine health check,” checking the bearings after each flight, and performing a one-time inspection of the bearings. EASB 01.00.65 does not apply to helicopters with MOD 07 5606 installed.

We also reviewed one Eurocopter EASB with four numbers: No 05.00.71 for Model AS350B, BA, BB, D, B1, B2, B3, and the non-FAA type certificated L1 helicopters; No. 05.00.63 for Model AS355E, F, F1, F2, N, and NP helicopters; No. 05.00.46 for the non-FAA type certificated Model AS550A2, C2, C3, and U2 helicopters; and No. 05.00.42 for the non-FAA type certificated Model AS555AF, AN, SN, UF, and UN helicopters (EASB 05.00.71). EASB 05.00.71 is Revision 2, dated December 19, 2012. EASB 05.00.71 specifies procedures for checking the bearings for deterioration or damage after the last flight of each day. EASB 05.00.71 does not apply to helicopters with MOD 07 5601 installed.

We also reviewed Eurocopter SB No. AS350–64.00.11, Revision 0, dated December 19, 2012 (SB AS350–64.00.11), which describes procedures for modifying the tail rotor chin weight support to prevent interference with the bearings. Eurocopter refers to the procedures in this SB as MOD 07 6604. SB AS350–64.00.11 only applies to helicopters with MOD 07 5601 installed.

### Proposed AD Requirements

This proposed AD would retain the requirements of AD 2012–25–04, Amendment 39–17285 (78 FR 24041, April 24, 2013). Additionally, this proposed AD would require, for AS350B3 helicopters with MOD 07 5601 installed:

- Modifying the chin weight support and replacing any bearings with more than 5 hours time-in-service (TIS) by following the procedures specified in SB AS350–64.00.11;

- Following certain procedures specified in SB AS350–01.00.66 for removing the additional chin weights and installing blanks, modifying the rotating pitch-change spider assembly, installing a load compensator, and modifying the electrical installation.
- After modifying the helicopter, removing the RFM limitations and placards required to be installed by AD 2012–25–04, Amendment 39–17285 (78 FR 24041, April 24, 2013). Modifying the helicopter would be terminating action for the repetitive checks and inspections.

For Model AS350B, AS350BA, AS350B1, AS350B2, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, AS355NP helicopters, and Model AS350B3 helicopters that do not have MOD 07 5601 installed, the proposed AD would also require:

- After the last flight of each day, without exceeding 10 hours TIS between two checks, checking the bearings for separation or a crack. These checks may be performed by the owner/operator (pilot) holding at least a private pilot certificate as it only requires a visual check of the bearings. This authorization is an exception to our standard maintenance regulations and must be entered into the aircraft records showing compliance with the proposed AD; and

- If there is separation or a crack over a specific size, replacing the bearings before further flight.

#### **Differences Between the Proposed AD and the EASA ADs**

The EASA AD requires removing the placard and RFM changes with the TAS limitation and replacing it with an IAS limitation. Since the FAA EAD did not include the TAS limitation, this proposed AD would not require removing it. This proposed AD would not require inserting the temporary engine health check procedure in the RFM.

#### **Costs of Compliance**

We estimate that the pilot checks of the bearings in the proposed AD would affect 938 helicopters of U.S. Registry, and that 50 helicopters would be affected by the remaining requirements. The cost for the pilot checks is minimal.

We estimate that operators may incur the following costs in order to comply with this AD. At an average labor rate of \$85 per hour, installing a placard and

revising the RFM will require about .5 work-hour, for a cost per helicopter of \$43 and a total cost to U.S. operators of \$2,150. Disassembling and inspecting the bearings will require about 6 work-hours, for a cost per helicopter of \$510 and a total cost to U.S. operators of \$25,500. Modifying the chin weight support will require about 8 work-hours, for a cost per helicopter of \$680, and a total cost to U.S. operators of \$34,000. Removing the additional chin weights installed on the tail rotor, modifying the rotating pitch-change spider assembly, installing a load compensator, and modifying the electrical system installation will require about 200 work-hours, and required parts will cost \$18,343, for a cost per helicopter of \$35,343, and a total cost to U.S. operators of \$1,767,150.

If necessary, replacing the bearings installed on the aircraft will require about 6 work-hours, at an average labor rate of \$85, and required parts will cost \$2,415, for a cost per helicopter of \$2,925.

#### **Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

#### **Regulatory Findings**

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

#### **List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### **The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

#### **PART 39—AIRWORTHINESS DIRECTIVES**

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### **§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2012–25–04, Amendment 39–17285 (78 FR 24041, April 24, 2013), and adding the following new (AD):

**Eurocopter France:** Docket No. FAA–2013–0822; Directorate Identifier 2013–SW–004–AD.

#### **(a) Applicability**

This AD applies to Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3 (except AS350B3 helicopters with modification (MOD) 07 5606 installed), AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters, certificated in any category.

#### **(b) Unsafe Condition**

This AD defines the unsafe condition as severe vibrations due to failure of laminated half-bearings (bearings). This condition could result in failure of the tail rotor and subsequent loss of control of the helicopter.

#### **(c) Affected ADs**

This AD supersedes AD No. 2012–25–04, Amendment 39–17285 (78 FR 24041, April 24, 2013).

#### **(d) Comments Due Date**

We must receive comments by November 22, 2013.

#### **(e) Compliance**

You are responsible for performing each action required by this AD within the

specified compliance time unless it has already been accomplished prior to that time.

**(f) Required Actions**

(1) For Model AS350B3 helicopters with MOD 07 5601 installed:

Note 1 to paragraph (f): MOD 075601 is an integral part of a specific Model AS350B3 configuration, commercially identified as "AS350B3e" and is not fitted on Model AS350B3 helicopters of other configurations.

(i) Before further flight:

(A) Install a velocity never exceed ( $V_{NE}$ ) placard that reads as follows on the instrument panel in full view of the pilot and co-pilot with 6-millimeter red letters on a white background:

VNE LIMITED TO 100 KTS IAS.

(B) Replace the IAS limit versus the flight altitude placard located inside the cabin on the center post with the placard as depicted in Table 1 to paragraph (f) of this AD:

**VNE POWER ON**

| Hp<br>(ft) | IAS<br>(kts) |
|------------|--------------|
| 0          | 100          |
| 2000       | 97           |
| 4000       | 94           |
| 6000       | 91           |
| 8000       | 88           |
| 10000      | 85           |
| 12000      | 82           |
| 14000      | 79           |
| 16000      | 76           |
| 18000      | 73           |
| 20000      | 70           |

**VNE POWER ON—Continued**

| Hp<br>(ft)              | IAS<br>(kts) |
|-------------------------|--------------|
| 22000                   | 67           |
| Valid for VNE POWER OFF |              |

Table 1 to paragraph (f).

(ii) Before further flight, revise the Rotorcraft Flight Manual (RFM) by inserting a copy of this AD into the RFM or by making pen and ink changes as follows:

(A) Revise paragraph 2.3 of the RFM by inserting the following:

VNE limited to 100 kts IAS.

(B) Revise paragraph 2.6 of the RFM by inserting Table 2 to Paragraph (f) of this AD.

**VNE POWER ON**

| Hp<br>(ft)              | IAS<br>(kts) |
|-------------------------|--------------|
| 0                       | 100          |
| 2000                    | 97           |
| 4000                    | 94           |
| 6000                    | 91           |
| 8000                    | 88           |
| 10000                   | 85           |
| 12000                   | 82           |
| 14000                   | 79           |
| 16000                   | 76           |
| 18000                   | 73           |
| 20000                   | 70           |
| 22000                   | 67           |
| Valid for VNE POWER OFF |              |

Table 2 to Paragraph (f).

(C) Add the following as paragraph 3.3.3 to the RFM:

3.3.3 IN-FLIGHT VIBRATIONS FELT IN THE PEDALS

Symptom:

IN-FLIGHT VIBRATIONS FELT IN THE PEDALS

1. CHECK PEDAL EFFECTIVENESS

2. SMOOTHLY REDUCE THE SPEED TO VY

3. AVOID SIDESLIP AS MUCH AS POSSIBLE

LAND AS SOON AS POSSIBLE

(iii) Before further flight, and thereafter after each flight, without exceeding 3 hours time-in-service (TIS) between two checks, visually check each bearing as follows:

(A) Position both tail rotor blades horizontally.

(B) Apply load (F) by hand, perpendicular to the pressure face of one tail rotor blade (a), as shown in Figure 1 to paragraph (f) of this AD, taking care not to reach the extreme position against the tail rotor hub. The load will deflect the tail rotor blade towards the tail boom.

(C) While maintaining the load, check all the visible faces of the bearings (front and side faces) in area B of DETAIL A of Figure 1 to paragraph (f) of this AD for separation between the elastomer and metal parts, a crack in the elastomer, or an extrusion (see example in Figure 2 to paragraph (f) of this AD). A flashlight may be used to enhance the check.

**BILLING CODE 4910-13-P**

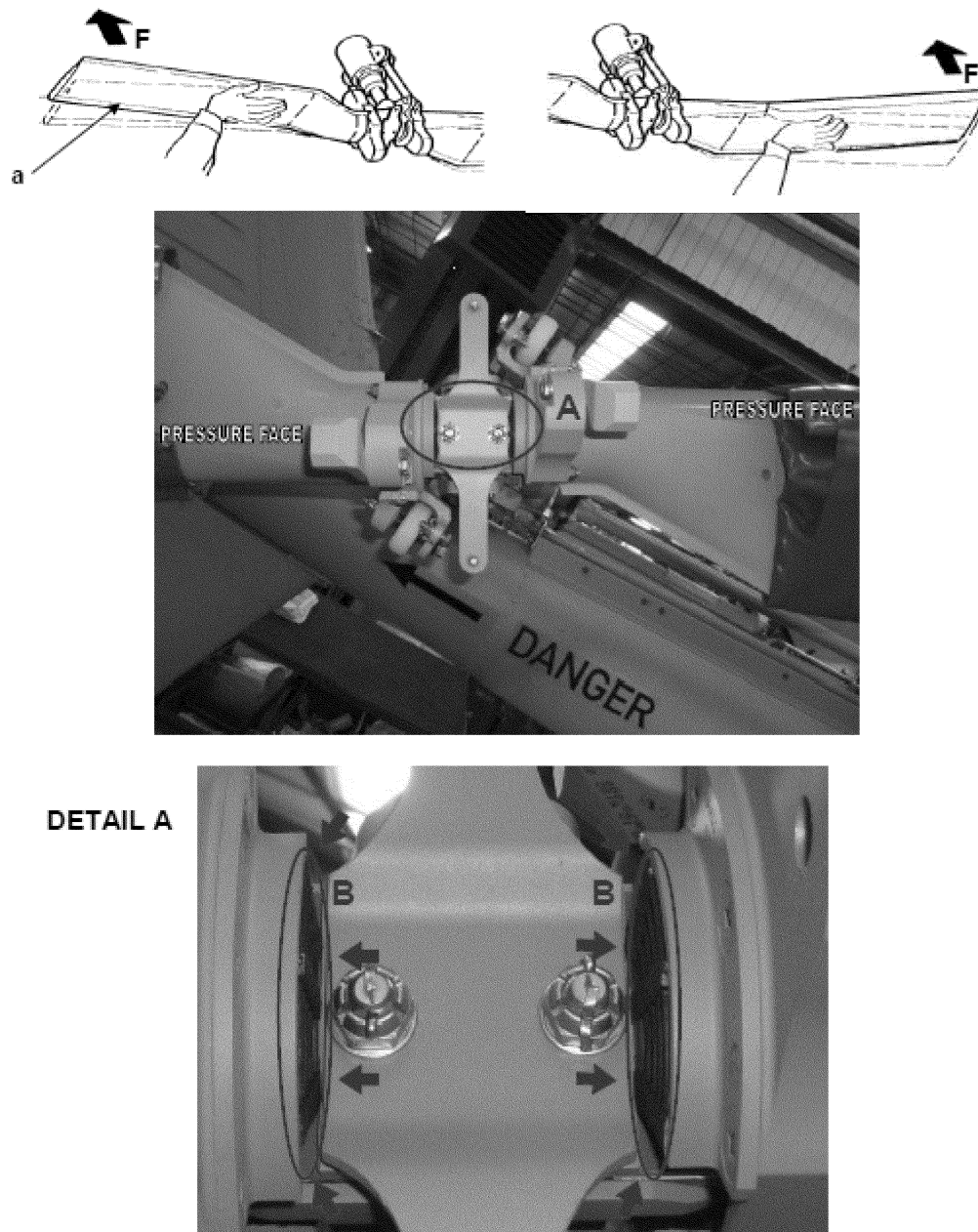


Figure 1 to paragraph (f)

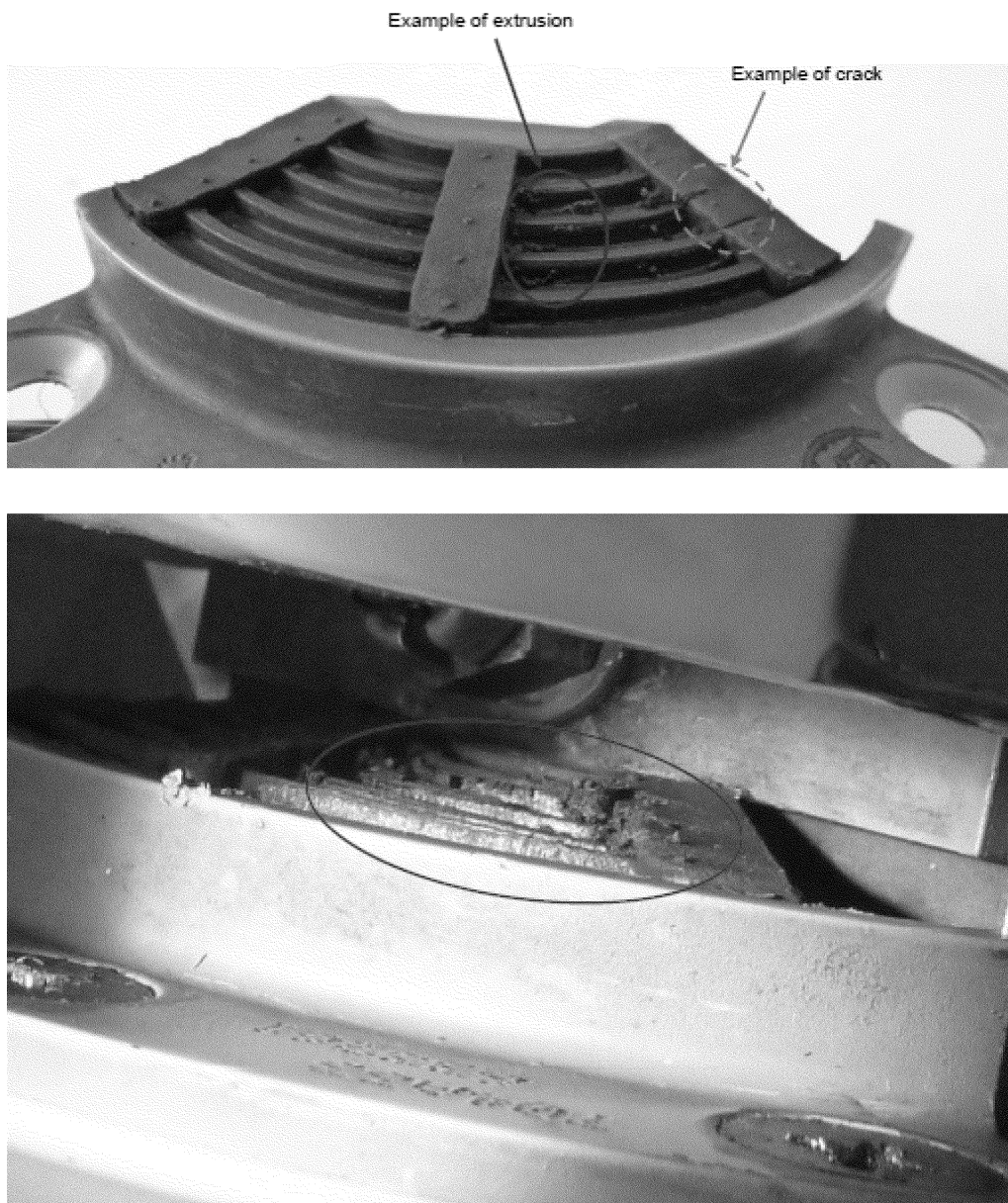


Figure 2 to paragraph (f)

(D) Repeat paragraphs (f)(1)(iii)(A) through (f)(1)(iii)(C) on the other tail rotor blade.

(E) Apply load (G) by hand perpendicular to the suction face of one tail rotor blade as shown in Figure 3 to paragraph (f) of this AD.

The load will deflect the tail rotor blade away from the tail boom.

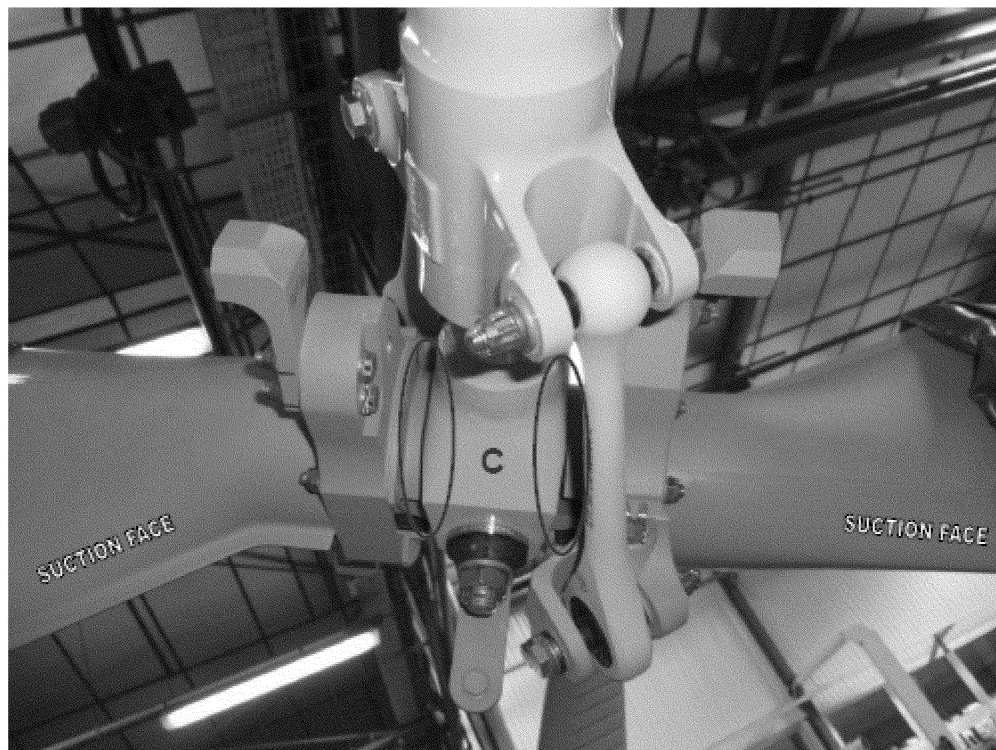
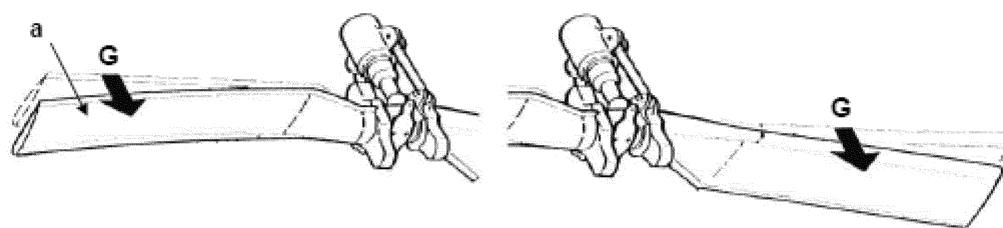


Figure 3 to paragraph (f)

(F) While maintaining the load, check visible faces of Area C as shown in Figure 3 to paragraph (f) of this AD for any extrusion. A flashlight may be used to enhance the check.

(G) Repeat paragraphs (f)(1)(iii)(E) and (f)(1)(iii)(F) on the other tail rotor blade.

(iv) The actions required by paragraphs (f)(1)(iii)(A) through (f)(1)(iii)(G) of this AD may be performed by the owner/operator

(pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR §§ 43.9(a)(1)–(4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR §§ 91.417, 121.380, or 135.439.

(v) If there is an extrusion on any bearing, before further flight, replace the four bearings with airworthy bearings.

(vi) If there is a separation or a crack on the pressure side bearing, measure the separation or the crack. If the separation or crack is greater than 5 millimeters (.196 inches) as indicated by dimension “L” in Figure 4 to paragraph (f) of this AD, before further flight, replace the four bearings with airworthy bearings.

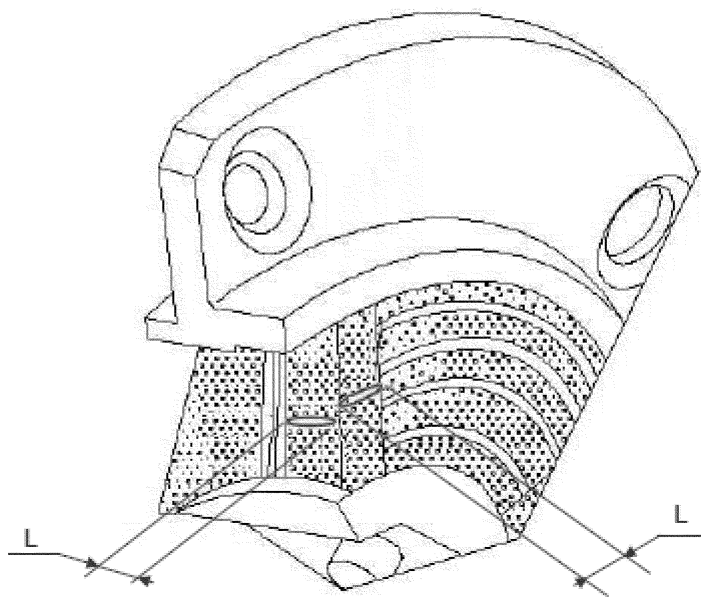


Figure 4 to paragraph (f)

**BILLING CODE 4910-13-C**

(vii) No later than after the last flight of the day, perform a one-time inspection by removing the bearings and inspecting for a separation, a crack, or an extrusion. This inspection is not a daily inspection. If there is a separation, crack, or extrusion, before further flight, replace the four bearings with airworthy bearings.

(viii) Within 130 hours TIS:

(A) Modify the chin weight support as described in the Accomplishment Instructions, paragraphs 3.B.2.a through 3.B.2.h, of Eurocopter Service Bulletin (SB) No. AS350-64.00.11, Revision 0, dated December 19, 2012.

(B) Remove the additional chin weights, install blanks on the chin weights, replace bearings with more than 5 hours TIS, and re-identify the blade assembly as described in the Accomplishment Instructions, paragraph 3.B.2.a., of Eurocopter SB No. AS350-01.00.66, Revision 1, dated February 15, 2013 (SB AS350-01.00.66).

(C) Modify and re-identify the rotating pitch-change spider assembly as described in the Accomplishment Instructions, paragraph 3.B.2.b., of SB AS350-01.00.66.

(D) Install a load compensator as described in the Accomplishment Instructions, paragraph 3.B.3.b., of SB AS350-01.00.66.

(E) Modify the electrical installation as described in the Accomplishment Instructions, section 3.B.4., of SB AS350-01.00.66.

**Note 4 to paragraph (f):** The manufacturer refers to the actions in paragraphs (f)(1)(viii)(B) through (f)(1)(viii)(E) as MOD 07 5606.

(ix) After modification of a helicopter as required by paragraphs (f)(1)(viii)(A) through (f)(1)(viii)(E) of this AD, the actions of

paragraph (f)(1)(iii) through (f)(1)(vii) of this AD are no longer required and the operating limitation placards and RFM procedures required by paragraphs (f)(1)(i) through (f)(1)(ii)(C) of this AD may be removed.

(2) For Model AS350B, AS350BA, AS350B1, AS350B2, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, AS355NP helicopters, and Model AS350B3 helicopters that do not have MOD 07 5601 installed:

(i) No later than after the last flight of the day, and thereafter during each last flight of the day check, without exceeding 10 hours TIS between two checks, visually check each bearing as described in paragraphs (f)(1)(iii)(A) through (f)(1)(vi) of this AD.

(ii) If there is an extrusion on any bearing, before further flight, replace the bearing with an airworthy bearing.

(iii) If there is a separation or a crack on the bearing, measure the separation or the crack. If the separation or crack is greater than 5 mm (.196 inches) as indicated by dimension "L" and greater than 2 mm (.078 inches) as indicated by dimension "P" in Figure 3 of Eurocopter Emergency Alert Service Bulletin (EASB) No. 05.00.71 or No. 05.00.63, both Revision 2 and both dated December 19, 2012, as required for your model helicopter, before further flight, replace the bearing.

**(g) Credit for Actions Previously Completed**

Actions accomplished before the effective date of this AD in accordance with Emergency AD No. 2012-21-51 or AD No. 2012-25-04, Amendment 39-17285 (78 FR 24041, April 24, 2013) are considered acceptable for compliance with the corresponding actions of this AD.

**(h) Special Flight Permit**

Special flight permits are prohibited.

**(i) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222-5328; email [robert.grant@faa.gov](mailto:robert.grant@faa.gov).

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

**(j) Additional Information**

(1) Eurocopter EASB No. 01.00.65 and No. 01.00.24, both Revision 3 and both dated February 4, 2013, which are co-published as one document and which are not incorporated by reference, contain additional information about the subject of this AD. You may review this service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in European Aviation Safety Agency Emergency AD No. 2013-0029, dated February 8, 2013, which can be found in the AD Docket on the Internet at <http://www.regulations.gov>.

**(k) Subject**

Joint Aircraft Service Component (JASC) Code: 6400: Tail Rotor.

Issued in Fort Worth, Texas, on September 13, 2013.

**Lance T. Gant,**

*Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2013-23102 Filed 9-20-13; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Parts 7 and 75

**RIN 1219-AB79**

#### Refuge Alternatives for Underground Coal Mines

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Request for information; extension of comment period.

**SUMMARY:** In response to requests from interested parties, the Mine Safety and Health Administration (MSHA) is extending the comment period on the Agency's Request for Information (RFI) on Refuge Alternatives for Underground Coal Mines. This extension gives interested parties additional time to review new information on refuge alternatives.

**DATES:** Comments must be received by midnight Eastern Standard Time on December 6, 2013.

**ADDRESSES:** Submit comments and supporting documentation by any of the following methods:

- *Federal E-Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments for Docket Number MSHA-2013-0033.

- *Electronic mail:* [zzMSHA-comments@dol.gov](mailto:zzMSHA-comments@dol.gov). Include "RIN 1219-AB79" in the subject line of the message.

- *Mail:* Send comments to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939.

- *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 21st floor.

**Instructions:** Clearly identify all submissions with "RIN 1219-AB79". Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including

information in the submission that should not be publicly disclosed.

**FOR FURTHER INFORMATION CONTACT:**

George F. Triebsch, Director, Office of Standards, Regulations, and Variances, MSHA, at [triebsch.george@dol.gov](mailto:triebsch.george@dol.gov) (email); 202-693-9440 (voice); or 202-693-9441 (facsimile). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** On August 8, 2013 (78 FR 48593), MSHA published a Request for Information on Refuge Alternatives for Underground Coal Mines. The RFI comment period had been scheduled to close on October 7, 2013. In response to requests, MSHA is extending the comment period to December 6, 2013 to allow interested parties additional time to review National Institute for Occupational Safety and Health information.

Dated: September 18, 2013.

**Joseph A. Main,**

*Assistant Secretary of Labor for Mine Safety and Health.*

[FR Doc. 2013-23031 Filed 9-20-13; 8:45 am]

**BILLING CODE 4510-43-P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 9

**RIN 2900-AO42**

#### Servicemembers' Group Life Insurance and Veterans' Group Life Insurance Information Access

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulations governing Servicemembers' Group Life Insurance (SGLI), Family SGLI, SGLI Traumatic Injury Protection, and Veterans' Group Life Insurance (all hereafter referred to as SGLI). The purpose is to acknowledge and clarify what is implicit in the law: That VA, which has the responsibility under the law to oversee the SGLI program and ensure its proper operation, also has the right to full access to records held by the insurer or on behalf of the insurer from whom VA has purchased a policy. These records include all of the insurer's records related to the operation and administration of the SGLI programs necessary to protect the legal and financial rights of the Government and of the persons affected by the activities of the agency and its agents.

**DATES:** Comments must be received by VA on or before November 22, 2013.

**ADDRESSES:** Written comments may be submitted through [http://](http://www.Regulations.gov)

[www.Regulations.gov](http://www.Regulations.gov); by mail or hand delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AO42 Servicemembers' Group Life Insurance and Veterans' Group Life Insurance Information Access." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at <http://www.Regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Monica Keitt, Attorney/Advisor, Department of Veterans Affairs Regional Office and Insurance Center (310/290B), 5000 Wissahickon Avenue, P.O. Box 8079, Philadelphia, PA 19101, (215) 842-2000, ext. 2905. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Section 1966(a) of title 38, United States Code, authorizes the Secretary of Veterans Affairs (Secretary) to purchase one or more group life insurance policies from one or more life insurance companies for the purposes of providing the benefits specified in 38 U.S.C. 1965-1980A, namely the Servicemembers' Group Life Insurance (SGLI), Family SGLI, SGLI Traumatic Injury Protection, and Veterans' Group Life Insurance programs (all hereafter referred to as SGLI). Under 38 U.S.C. 1966 and the terms of the policy purchased by VA pursuant to section 1966(a), the insurer has the responsibility of administering the SGLI programs on a day-to-day basis with VA retaining oversight responsibility to ensure that the SGLI programs are managed in an effective and efficient manner that allows the Secretary to fulfill his responsibilities under the law.

Section 3101 of title 44, United States Code, requires the head of each Federal agency to make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to "protect the legal and financial rights of the Government and of persons directly affected by the agency's activities." The records that are created and maintained

by or on behalf of the insurer, reinsurer(s), and their successors (jointly referred to hereafter as “insurer”) under the SGLI policy are Federal records created because of the contractual relationship between VA and the insurer under 38 U.S.C. 1966. Federal records are defined in 44 U.S.C. 3301.

In order for VA to meet its responsibilities under sections 1966 and 3101, VA proposes to add § 9.21 to 38 CFR part 9, to clarify that VA has the right to complete and unrestricted access to the records of any insurer with respect to the policy and related benefit programs or services that are derived from the policy. This access includes access to any records relating to the operation and administration of the benefit programs derived from the policy and records related to the organization, functions, policies, decisions, procedures, and essential transactions of the insurer. VA’s access to records includes access to records containing financial information of the insurer as these records are considered part of the records that encompass the essential transactions performed by the insurer in the operation of the SGLI programs. VA’s access to these records is required to ensure that the legal and financial rights of the Government and the persons affected by activities of the insurer are protected. VA’s access to records shall also include access to records of individuals insured under the policy or utilizing other related program benefits and services or who may be entitled to benefits derived through the SGLI programs, including personally identifiable information concerning such individuals and their beneficiaries. Implicit in the law and policy is that the insurer will provide this access in cooperation with VA to improve the delivery of insurance products and benefits under the law for servicemembers, veterans, their dependents, and eligible beneficiaries. This proposed rule would provide clarity and assurance that there are no barriers or questions regarding the extent of VA’s unfettered access to appropriate records related to the policy.

Additionally, we note that the insurer must comply with the provisions of the Privacy Act, 5 U.S.C. 552a, with regard to Federal records held in a Privacy Act system of records on VA’s behalf. The Federal records held by the insurer are protected by the Privacy Act when VA provides by a contract for the operation by or on its behalf of a system of records to accomplish a VA function. See 5 U.S.C. 552a(m). The operation of the SGLI insurance programs is a VA

function authorized to be performed by the insurer under section 1966. VA has promulgated a system of records notice for SGLI files, “Veterans and Uniformed Services Personnel Programs of U.S. Government Life Insurance—VA” (36VA29), published at 75 FR 65405, October 22, 2010.

We also note that the provisions of 38 U.S.C. 5701, Confidential nature of claims, and 38 U.S.C. 7332, Confidentiality of certain medical records, are applicable to records held by the insurer. Furthermore, the provisions of 38 U.S.C. 5725 apply to the insurer and the policy authorized by section 1966. The Federal records held by the insurer, depending on content, may meet the definition of “VA sensitive data” in 38 U.S.C. 5727(23). The requirements of 38 U.S.C. 5725 regarding a liquidated damages clause apply to the policy purchased by VA under 38 U.S.C. 1966.

The proposed rule would also clarify VA’s authority to require the insurer to provide original records to the Secretary or a representative of the Secretary at the Secretary’s direction. The records shall be available in either hard copy or readable electronic media. At the Secretary’s option, copies may be provided in lieu of originals where allowed by the Federal Records Act, 44 U.S.C. chapter 31. Finally, the proposed rule would include an authority citation to 5 U.S.C. 552, 552a; 38 U.S.C. 1966, 5701, 5725, 5727, 7332; and 44 U.S.C. 3101, 3301.

This proposed rule would apply to the insurer as of the effective date of the final rule.

#### **Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments or on the private sector.

#### **Paperwork Reduction Act**

This proposed rule contains no provisions that would constitute a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

#### **Executive Order 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory

alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action” that requires review by the Office of Management and Budget (OMB), unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA’s impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA’s Web site at <http://www1.va.gov/orpm/>, by following the link for “VA Regulations Published.”

#### **Regulatory Flexibility Act**

The Secretary of Veterans Affairs hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would directly affect only individuals and the insurer and would not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this regulatory action is exempt from the initial and final regulatory

flexibility analysis requirements of sections 603 and 604.

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.103, Life Insurance for Veterans.

### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, approved this document on September 12, 2013, for publication.

### List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Dated: September 17, 2013.

**Robert C. McFetridge,**

*Director, Regulation Policy and Management,  
Office of the General Counsel, Department  
of Veterans Affairs.*

For the reasons stated in the preamble, VA proposes to amend 38 CFR part 9 as set forth below:

### PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

■ 1. The authority citation for part 9 continues to read as follows:

**Authority:** 38 U.S.C. 501, 1965–1980A, unless otherwise noted.

■ 2. Add § 9.21 to read as follows:

#### § 9.21 VA's access to records maintained by the insurer, reinsurer(s), and their successors.

(a) In order to perform oversight responsibilities designed to protect the legal and financial rights of the Government and persons affected by the activities of the Department of Veterans Affairs and its agents and to ensure that the policy and the related program benefits and services are managed effectively and efficiently as required by law, the Secretary of Veterans Affairs shall have complete and unrestricted access to the records of any insurer, reinsurer(s), and their successors with respect to the policy and related benefit programs or services that are derived from the policy. This access includes access to:

(1) Any records relating to the operation and administration of benefit programs derived from the policy, which are considered to be Federal records created under the policy;

(2) Records related to the organization, functions, policies, decisions, procedures, and essential transactions, including financial information, of the insurer, reinsurer(s), and their successors; and

(3) Records of individuals insured under the policy or utilizing other related program benefits and services or who may be entitled to benefits derived through the Servicemembers' and Veterans' Group Life Insurance programs, including personally identifiable information concerning such individuals and their beneficiaries.

(b) Complete access to these records shall include the right to have the originals of such records sent to the Secretary of Veterans Affairs or a representative of the Secretary at the Secretary's direction. The records shall be available in either hard copy or readable electronic media. At the Secretary's option, copies may be provided in lieu of originals where allowed by the Federal Records Act, 44 U.S.C. chapter 31.

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 1966, 5701, 5725, 5727, 7332; 44 U.S.C. 3101, 3301).

[FR Doc. 2013–22977 Filed 9–20–13; 8:45 am]

**BILLING CODE 8320–01–P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 81

[EPA–R09–OAR–2008–0467; FRL–9901–12–Region 9]

#### Designation of Areas for Air Quality Planning Purposes; California; San Joaquin Valley, South Coast Air Basin, Coachella Valley, and Sacramento Metro Ozone Nonattainment Areas; Reclassification

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** EPA is withdrawing a proposed action to reclassify the Indian country pertaining to the Morongo Band of Mission Indians (Morongo Reservation) from “severe-17” to “extreme” for the 1997 eight-hour ozone standard.

**DATES:** The proposed rule published on August 27, 2009 (74 FR 43654) is withdrawn with respect to the Morongo Reservation on September 23, 2013.

**FOR FURTHER INFORMATION CONTACT:** Ken Israels, Grants and Program Integration Office (AIR–8), U.S. Environmental Protection Agency, Region IX, (415) 947–4102, [israels.ken@epa.gov](mailto:israels.ken@epa.gov).

**SUPPLEMENTARY INFORMATION:** On August 27, 2009 (74 FR 43654), EPA published a proposed rule to grant requests by the State of California to reclassify four nonattainment areas for the 1997 8-hour ozone standards and to reclassify Indian country in keeping with the classifications of nonattainment areas within which they are located. On May 5, 2010 (75 FR 24409), EPA finalized the action as proposed except that EPA deferred reclassification of Indian country pertaining to the Morongo Band of Mission Indians (Morongo Reservation) and the Pechanga Band of Luiseno Mission Indians (Pechanga Reservation) in keeping with the state's request for the South Coast Air Basin. On January 2, 2013 (78 FR 51), EPA proposed to revise the boundaries of the South Coast Air Basin nonattainment area to designate the Morongo Reservation as a separate air quality planning area for the 1997 8-hour ozone standards. In the January 2, 2013 proposed rule, EPA indicated that, if the Agency finalizes the January 2, 2013 proposed rule, as proposed, EPA would withdraw the August 27, 2009 proposed rule to the extent that the 2009 proposed rule relates to the Morongo Reservation. In the Rules section of this **Federal Register**, EPA is finalizing its January 2, 2013 proposed rule, as proposed. In light of final Agency action on the January 2, 2013 proposal, EPA is withdrawing the August 27, 2009 proposed reclassification of the Morongo Reservation for the 1997 8-hour ozone standard. This withdrawal is being taken under Clean Air Act sections 301(a) and 301(d)(4).

#### List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, National parks, Ozone, Wilderness areas.

Dated: September 4, 2013.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2013–22871 Filed 9–20–13; 8:45 am]

**BILLING CODE 6560–50–P**

# Notices

Federal Register

Vol. 78, No. 184

Monday, September 23, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Notice of October 15 Board for International Food and Agricultural Development (BIFAD) Meeting

**AGENCY:** United States Agency for International Development.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, notice is hereby given of the public meeting of the Board for International Food and Agricultural Development (BIFAD).

*Date:* Tuesday, October 15, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Location:* Downtown Des Moines Marriott, 700 Grand Avenue, Des Moines, Iowa.

### Agenda

The public business meeting will begin promptly at 8:00 a.m. with opening remarks by BIFAD Chair Brady Deaton. The Board will address both old and new business during this time and will hear from USAID, the university community and other experts on progress and mechanisms for advancing programming in agricultural research and capacity development. During the business session the BIFAD will host a panel of key authors who will discuss trends in funding for Global Agricultural Research and Development and Innovation, moderated by BIFAD member Catherine Bertini. The BIFAD then will receive updates from USAID on its Feed the Future Innovation Labs and the Higher Education Solutions Network in a panel moderated by BIFAD member Marty McVey. The BIFAD chair will present the reinstituted 'BIFAD Award for Scientific Excellence in a USAID Collaborative Research Support Program.' Additional time for public comment will be allowed following the award. At 12:15, the BIFAD will adjourn for lunch followed by afternoon panel sessions.

In the afternoon starting promptly at 2:00 p.m. the BIFAD Chair Brady Deaton and Julie Borlaug from Texas A&M will make opening remarks to convene the first of four panels focused on Human and Institutional Capacity Development (HICD) in Agricultural Research; Agricultural Training and Education; Extension; Policy, Agribusiness and Open Data; and Exploration of Capacity Development Opportunities with the Private Sector and Massive Open Online Courses (MOOCs). Time will be allowed for public comment. These panels will be followed by a poster session and reception hosted by the U.S. Agency for International Development and BIFAD. The central theme of this year's meeting will be *"Human and Institutional Capacity Development."*

Dr. Brady Deaton, BIFAD Chair and Chancellor of the University of Missouri at Columbia, will preside over the meeting.

### Stakeholders

Those wishing to attend the meeting or obtain additional information about BIFAD contact Susan Owens, Executive Director and Designated Federal Officer for BIFAD. Interested persons may write to her in care of the U.S. Agency for International Development, Ronald Reagan Building, Bureau for Food Security, 1300 Pennsylvania Avenue NW., Room 2.09-067, Washington, DC, 20523-2110 or telephone her at (202) 712-0218.

### FOR FURTHER INFORMATION CONTACT:

Susan Owens, Executive Director and Designated Federal Officer for BIFAD.

Dated: September 17, 2013.

**Susan Owens,**

*Executive Director and Designated Federal Officer for BIFAD, U.S. Agency for International Development.*

[FR Doc. 2013-23112 Filed 9-20-13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. APHIS-2013-0069]

### Notice of Request for Extension of Approval of an Information Collection; Requirements for Poultry and Hatching Eggs for Export

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the export of poultry and hatching eggs from the United States.

**DATES:** We will consider all comments that we receive on or before November 22, 2013.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0069-0001>.

- *Postal Mail/Commercial Delivery:*

Send your comment to Docket No. APHIS-2013-0069, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0069> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** For information on the export of poultry and hatching eggs from the United States, contact Dr. Antonio Ramirez, Senior Staff Veterinarian, NCIE, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 851-3355. For copies of more detailed information on the information collection, contact Mrs.

Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

#### SUPPLEMENTARY INFORMATION:

*Title:* Requirements for Poultry and Hatching Eggs for Export.

*OMB Number:* 0579-0048.

*Type of Request:* Extension of approval of an information collection.

*Abstract:* Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA), among other things, collects information and conducts inspections to ensure that poultry and hatching eggs exported from the United States are free of communicable diseases.

The export of agricultural commodities, including poultry and hatching eggs, is a major business in the United States and contributes to a favorable balance of trade. Receiving countries have specific health requirements for poultry and hatching eggs exported from the United States. Most countries require a certification that our poultry and hatching eggs are free of diseases of concern to the receiving country. This certification generally must carry the USDA seal and be endorsed by an authorized APHIS veterinarian. In addition, APHIS requires owners and exporters of poultry and hatching eggs to provide health and identification information. Veterinary Services Form 17-6, Certificate for Poultry and Hatching Eggs for Export, is used to meet these requirements.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection

technologies; e.g., permitting electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 0.5 hours per response.

*Respondents:* Owners of poultry and hatching egg operations and exporters of poultry and hatching eggs.

*Estimated annual number of respondents:* 300.

*Estimated annual number of responses per respondent:* 34.

*Estimated annual number of responses:* 10,200.

*Estimated total annual burden on respondents:* 5,100 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 17th day of September 2013.

**Michael C. Gregoire,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2013-23039 Filed 9-20-13; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. APHIS-2013-0080]

#### Notice of Request for Approval of an Information Collection; National Animal Health Monitoring System; Cervid 2014 Study

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** New information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request approval of a new information collection for the National Animal Health Monitoring System's Cervid 2014 Study to support the farmed cervid industry in the United States.

**DATES:** We will consider all comments that we receive on or before November 22, 2013.

**ADDRESSES:** You may submit comments by either of the following methods:

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/documentDetail;D=APHIS-2013-0080-0001>.

#### • *Postal Mail/Commercial Delivery:*

Send your comment to Docket No. APHIS-2013-0080, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/documentDetail;D=APHIS-2013-0080> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** For information on the Cervid 2014 Study, contact Mr. Chris Quatrano, Industry Analyst, Centers for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Avenue, Building B MS 2E7, Fort Collins, CO 80526; (970) 494-7207. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

#### SUPPLEMENTARY INFORMATION:

*Title:* National Animal Health Monitoring System; Cervid 2014 Study.

*OMB Number:* 0579-XXXX.

*Type of Request:* Approval of a new information collection.

*Abstract:* Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things, to protect the health of U.S. livestock and poultry populations by preventing the introduction and interstate spread of serious diseases and pests of livestock and by eradicating such diseases from the United States when feasible. In connection with this mission, APHIS operates the National Animal Health Monitoring System (NAHMS), which collects nationally representative, statistically valid, and scientifically sound data on the prevalence and economic importance of livestock diseases and associated risk factors.

NAHMS' national studies are a collaborative industry and Government initiative to help determine the most effective means of preventing and controlling diseases of livestock. APHIS is the only agency responsible for collecting national data on livestock health.

APHIS plans to conduct a Cervid 2014 Study to obtain baseline information

about the cervid population and to provide a foundation for possible future studies. The objectives of the study are to:

- Provide a baseline description of the U.S. farmed-cervid industry, including inventory, species, operation size, and operation type;
- Describe current U.S. farmed-cervid production practices and challenges, including animal identification, fencing, animal care and handling, trade and movement, and disease testing;
- Describe the producer-reported occurrence of epizootic hemorrhagic disease (EHD) and the management and biosecurity practices important for controlling EHD on cervid farms; and
- Describe health management and biosecurity practices important for the control of infectious diseases on cervid farms.

The Cervid 2014 Study participants will be asked to complete and return a mail-in questionnaire. Non-respondents to the mailing will receive a follow-up telephone call and will be asked to complete the questionnaire over the telephone. Our predicted response rate is reflected in the estimated annual number of respondents and responses and the estimated total annual burden on respondents.

APHIS will use the information collected to describe current cervid health and management practices, help policymakers and industry make informed decisions, help researchers and private enterprise identify and focus on vital issues related to farmed-cervid health and productivity, facilitate the education of future producers and veterinarians, and conduct economic analyses of the health and production of the U.S. farmed-cervid industry.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, through use, as

appropriate, of automated, electronic, mechanical, and other collection technologies, such as electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 0.50 hours per response.

*Respondents:* Cervid farm owners and operators.

*Estimated annual number of respondents:* 3,000.

*Estimated annual number of responses per respondent:* 1.

*Estimated annual number of responses:* 3,000.

*Estimated total annual burden on respondents:* 990 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 17th day of September 2013.

**Michael C. Gregoire,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2013-23037 Filed 9-20-13; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. APHIS-2013-0071]

#### Notice of Request for Approval of an Information Collection; National Animal Health Monitoring System; Bison 2014 Study

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** New information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request approval of a new information collection for the National Animal Health Monitoring System's Bison 2014 Study to support the bison industry of the United States.

**DATES:** We will consider all comments that we receive on or before November 22, 2013.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0071-0001>.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2013-0071, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0071> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** For information on the Bison 2014 Study, contact Mr. Chris Quatrano, Industry Analyst, Centers for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Avenue, Building B MS 2E7, Fort Collins, CO 80526; (970) 494-7207. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

#### SUPPLEMENTARY INFORMATION:

*Title:* National Animal Health Monitoring System; Bison 2014 Study.  
*OMB Number:* 0579-XXXX.

*Type of Request:* Approval of a new information collection.

*Abstract:* Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things, to protect the health of U.S. livestock and poultry populations by preventing the introduction and interstate spread of serious diseases and pests of livestock and by eradicating such diseases from the United States when feasible. In connection with this mission, APHIS operates the National Animal Health Monitoring System (NAHMS), which collects nationally representative, statistically valid, and scientifically sound data on the prevalence and economic importance of livestock diseases and associated risk factors.

NAHMS' national studies are a collaborative industry and Government initiative to help determine the most effective means of preventing and controlling diseases of livestock. APHIS is the only agency responsible for collecting national data on livestock health.

APHIS plans to conduct a Bison 2014 Study to obtain baseline information

about the livestock population and to provide a foundation for possible future studies. The objectives of the study are to:

- Provide a baseline description of the U.S. bison industry, including general characteristics of operations, such as inventory, size, and type;
- Describe current U.S. bison industry production practices and challenges, including animal identification, confinement and handling, care, and disease testing;
- Describe health management and biosecurity practices important for the productivity and health of ranched bison; and
- Describe producer-reported occurrence of select health problems and evaluate potentially associated risk factors.

The study will consist of a self-administered questionnaire. APHIS will analyze and organize the information collected into one or more reports. The information collected will be used by APHIS to describe current bison health and management practices, help policymakers and industry make informed decisions, help researchers and private enterprise identify and focus on vital issues related to bison health and productivity, facilitate the education of future producers and veterinarians, and conduct economic analyses of the health and production of the U.S. bison industry.

On March 20, 2012, NAHMS was recognized by the Office of Management and Budget (OMB) as a statistical unit under the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA). All information acquired under the Bison 2014 Study will be used for statistical purposes only and will be treated as confidential in accordance with CIPSEA guidelines. Only NAHMS staff and designated agents will be permitted access to individual-level data.

We are asking OMB to approve our use of this information collection activity for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, such as electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average 0.33 hours per response.

*Respondents:* Bison owners and operators.

*Estimated annual number of respondents:* 1,200.

*Estimated annual number of responses per respondent:* 1.

*Estimated annual number of responses:* 1,200.

*Estimated total annual burden on respondents:* 396 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 17th day of September 2013.

**Michael C. Gregoire,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2013-23038 Filed 9-20-13; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### **Cleveland National Forest, California, SDG&E Master Special Use Permit and Permit To Construct Power Line Replacement Projects EIR/EIS**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare a joint Environmental Impact Report/Environmental Impact Statement.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, notice is hereby given that the Cleveland National Forest (CNF), together with the California Public Utilities Commission (CPUC), intends to prepare a joint Environmental Impact Report and Environmental Impact Statement (EIR/EIS), for the San Diego Gas & Electric Company (SDG&E) Master Special Use Permit and Permit to Construct Power Line Replacement Projects. The Master Special Use Permit would authorize

SDG&E to upgrade and/or relocate certain electric powerlines on National Forest System lands, while providing for the operation and maintenance of the SDG&E electric powerline system. The project area is located in multiple locations within the Trabuco, Palomar, and Descanso Ranger Districts, Cleveland National Forest, Orange and San Diego Counties, California. This action is needed because the existing authorizations are expired, and the existing powerlines are needed to supply power to local communities, residents, businesses, and government owned facilities located within and adjacent to the National Forest. The project study area not only traverses National Forest System lands, but due to the patchwork of land ownership in the project study area, also traverses the National System of Public Lands managed by the Bureau of Land Management (BLM); tribal lands of the La Jolla, Campo, Inaja, and Viejas Indian Reservations managed by the respective tribes and held in trust by the Bureau of Indian Affairs (BIA); Cuyamaca Rancho State Park lands managed by California State Parks (CSP); and private holdings within unincorporated San Diego County amongst others.

**DATES:** All scoping comments must be received by November 7, 2013.

**ADDRESSES:** You may submit comments to Lisa Orsaba, California Public Utilities Commission, and Will Metz, Forest Supervisor, Cleveland National Forest by either of the following methods:

*Email:* [cnfmsup@dudek.com](mailto:cnfmsup@dudek.com).

*Mail:* c/o Dudek, 605 Third Street, Encinitas, California 92024.

#### **FOR FURTHER INFORMATION CONTACT:**

Information can be requested by leaving a voice message at 866-467-4727 or by checking the project Web site at <http://www.cpuc.ca.gov/environment/info/dudek/CNF/CNF.htm>.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** In 2005, in consultation with the Forest Service, SDG&E submitted an initial application to obtain a Master Special Use Permit (MSUP). The purpose of the MSUP was to consolidate SDG&E's rights and responsibilities in connection with the continued operation of its electric lines and other existing facilities located within the CNF. As part of the NEPA review process, the Forest Service circulated an Environmental Assessment (EA) for public comment in

2009. In response to public comments received on that EA, the Forest Service determined that additional fire risk reduction measures within the CNF (including fire hardening) and additional undergrounding should be evaluated as part of the MSUP review process and that, as a result, an environmental impact statement (EIS) was required.

SDG&E has expanded the scope of the proposed MSUP to include fire hardening, undergrounding and relocation as proposed in the power line replacement projects discussed in their application to the CPUC. The proposed power line replacement projects will require approval from the CPUC.

The CPUC, Forest Service, BLM, BIA, and CSP have independent jurisdiction and approval authority for the project segments within their areas of jurisdiction. The CPUC is the lead agency under California law and the Forest Service is the lead federal agency. As joint lead agencies, the CPUC and Forest Service have developed and signed a Memorandum of Understanding (January 2012) that will direct the preparation of a joint Environmental Impact Report (EIR) to comply with the California Environmental Quality Act (CEQA) and an Environmental Impact Statement (EIS) to comply with the National Environmental Policy Act (NEPA). The joint document will be called the "SDG&E Master Special Use Permit and Permit to Construct Power Line Replacement Projects EIR/EIS. The BLM and BIA are joining the Forest Service as federal cooperating agencies under NEPA, and the CSP is participating as a responsible agency under CEQA.

#### **Purpose and Need for Action**

The Forest Service purpose is to authorize the powerlines and associated facilities needed to continue electric service to a variety of users within and adjacent to the CNF through a Master Special Use Permit in a manner that is consistent with the CNF Land Management Plan (LMP). This action is needed because the 70 individual permits or easements for the existing facilities have expired, and a permit is required for the continued occupancy and use of National Forest System lands.

Permits issued by the Forest Service are required by law to be consistent with the LMP. The LMP identifies suitable uses within various land use zones, describes desired conditions based on the LMP goals and objectives, and sets resource management standards. The Forest Service proposed action is designed to be consistent with

the LMP requirements. The Forest Service purpose and need will guide the development of alternatives considered on National Forest System lands.

The BLM purpose is to authorize the powerlines and associated facilities needed to continue electric service to a variety of users within and adjacent to the National System of Public Lands in a manner that is consistent with the South Coast Resource Area Plan. This action is needed because the Right-of-Way (ROW) grants for the existing facilities have expired or were never issued, and a ROW grant is required for the continued occupancy and use of Public Lands.

The BIA purpose is to authorize the powerlines and associated upgrades needed to continue electric service to a variety of users within and adjacent to the Indian trust lands in a manner that is consistent with tribal land use goals and policies. The action is needed to amend the existing easements to include the proposed fire hardening measures and locations and to extend their term.

#### **Proposed Action**

The Forest Service proposed action would combine over 70 existing use permits for electric line facilities within the CNF into one MSUP. The MSUP would allow the continued maintenance and operation of more than 50 miles of 69 kV power lines and 12 kV distribution lines and ancillary facilities that are required to operate and maintain existing electric facilities located within the administrative boundary of the CNF. The Project would also replace several existing 69 kV power lines and 12 kV distribution lines located within and outside of the CNF. Replacement would include fire hardening (wood to steel pole replacement), along with removal, relocation, undergrounding and single to double circuit conversion along certain segments. Specific components of the Forest Service proposed action include relocating transmission line (TL) number 626 out of the Cedar Creek undeveloped area, relocating distribution line 79 out of the Sill Hill Inventoried Roadless Area, and relocating distribution line 157 out of the Hauser Wilderness Area. A more detailed description of the proposed action is available in the Notice of Preparation posted on the project Web site.

The BLM proposed action would authorize one electric line and issue new ROW grants for two electric lines, and authorize the fire hardening upgrades. This action includes portions of TL 629, TL 6923, and TL 625.

The BIA proposed action would authorize the fire hardening upgrades and amend the term and location of the existing easements. This action includes portions of TL 629 and TL 682.

#### **Possible Alternatives**

The EIR/EIS will describe and evaluate the comparative merits of a reasonable range of alternatives to the proposed action and associated Powerline Replacement Projects. Alternatives to be analyzed in the EIR/EIS will be developed during the environmental review process and will consider input received during scoping, and will include the no action alternative as required by law.

#### **Responsible Official**

The Responsible Official for the Forest Service decision is Will Metz, Forest Supervisor, Cleveland National Forest.

The Responsible Official for the BLM decision is John Kalish, Field Manager, Palm Springs South Coast Field Office.

The Responsible Official for the BIA decision is Amy L. Dutschke, Regional Director, BIA Pacific Region.

The Commissioners appointed to the CPUC are the deciding body for the Permit to Construct.

The Responsible Official for the CSP decision is Dan Falat, Colorado Desert District Superintendent.

#### **Nature of Decision To Be Made**

Each agency has independent decision authority within their jurisdictional area. The federal responsible officials, as well as the CSP, will decide whether or not to authorize their portions of the project, and if so, under what conditions. The CPUC has independent jurisdiction over power lines and will determine if a Permit to Construct will be issued, and if so, under what conditions.

#### **Preliminary Issues**

The Forest Service and CPUC have identified potential issues and impacts to the existing environment require a detailed analysis in the EIR/EIS. Those issues and impacts include aesthetics, air quality, biological resources, cultural and paleontological resources, greenhouse gas emissions, fire, water quality, land use, noise, public services, recreation, wilderness, and transportation. No determinations have yet been made as to the significance of these potential impacts; such determinations will be made in the environmental analysis conducted in the EIR/EIS after the issues are considered thoroughly. This overview is presented to assist the public and

agencies in preparing written scoping comments.

### Invitation to Cooperating Agencies

The Forest Service invites other federal agencies or tribes to join as cooperating agencies. Requests for cooperating agency status may be submitted to Forest Supervisor Will Metz, Cleveland National Forest, 10845 Rancho Bernardo Road, Suite 200, San Diego, CA 92127-2107.

### Scoping Process

The CPUC and Forest Service are initiating the joint CEQA/NEPA scoping process with this Notice of Intent and associated Notice of Preparation. The comments received during scoping will help guide the development of the EIR/EIS. Two public workshops will be held during the scoping process to answer questions about the proposed action. Workshops will be held at the Julian Elementary School, 1704 Cape Horn, Julian, California, on Tuesday, October 22, 2013 at 5:00 p.m., and at the Alpine Community Center, 1830 Alpine Boulevard, Alpine, California, on Wednesday, October 23, 2013 at 5:00 p.m.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the CPUC and Forest Service preparation of the EIR/EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received during scoping, including names and addresses of those who comment, will be part of the public record for this proposed project. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to participate in subsequent administrative review or judicial review of the Forest Service decision. This project will follow the predecisional administrative review process pursuant to 36 CFR 218, Subparts A and B.

Dated: September 16, 2013.

**William Metz,**

*Forest Supervisor.*

[FR Doc. 2013-22904 Filed 9-20-13; 8:45 am]

**BILLING CODE 3410-11-P**

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

#### Notice of Intent To Review Online Homeownership Education Courses for Nationwide Use in the Single Family Housing Section 502 Direct Loan Program

**AGENCY:** Rural Housing Service, USDA.  
**ACTION:** Notice.

**SUMMARY:** Effective on May 7, 2007, first-time homebuyers financed under the direct loan program must successfully complete an approved homeownership education course prior to loan closing. 7 CFR Part 3550.11 outlines the order of preference given to courses. First preference is given to classroom, one-on-one counseling, or interactive video conference. These formats are generally extensive and require a significant time and participation commitment from the Agency applicants. Second preference is given to interactive home-study or interactive telephone counseling of at least four hours duration. These formats may only be used if the formats under the first preference are not reasonably available. Third preference, which can only be used if all other formats are not reasonably available, is given to online counseling. It also outlines the requirements an education provider and their course must meet in order to be approved for use by Agency applicants.

While approval is generally made by the Agency at the state level, there is currently one nationally approved online education provider. To expand the Agency applicants' access to and options of approved education providers, the Agency will consider approving other online education providers on a national level. Approval will be subject to meeting course criteria, a recommendation by the Agency-selected panel of housing partners, and signoff by the Administrator. Approval will be given as a third preference format unless the education provider is able to demonstrate and document how their online course along with a required supplemented service provides the same level of training and individualized attention as a first or second preference.

A notice of education providers approved through this process will be issued via a memorandum to the Rural Development (RD) state offices. The memorandum will list the format preference assigned to each provider. A copy of the memorandum will be simultaneously emailed to all education providers who applied through this notice.

Approvals are not subject to expiration. However, an approval may be revoked for justifiable cause.

**DATES:** Online homeownership education providers interested in having their courses reviewed should submit a complete package to the Single Family Housing Direct Division within 30 days of this notice. Submissions may be sent electronically to [SFHDIRECTPROGRAM@wdc.usda.gov](mailto:SFHDIRECTPROGRAM@wdc.usda.gov) or by mail to 1400 Independence Avenue, Stop 0783, Washington, DC 20250-0783.

**FOR FURTHER INFORMATION CONTACT:** Shantelle Gordon, [shantelle.gordon@wdc.usda.gov](mailto:shantelle.gordon@wdc.usda.gov) or (202) 205-9567.

### Non-Discrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.)

To file a complaint of discrimination, complete, sign and mail a program discrimination complaint form, (available at any USDA office location or online at [www.ascr.usda.gov](http://www.ascr.usda.gov), or write to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., STOP 9410, Washington, DC 20250-9410.

Or call toll-free (866) 632-9992 (voice) to obtain additional information, the appropriate office or to request documents. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339 or (877) 845-6136 (in Spanish). "USDA is an equal opportunity provider, employer and lender."

Persons with disabilities who require alternative means for communication of program information (e.g. Brail, large print, audiotape, etc.) should contact USDA TARTET Center at (202) 720-2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:** At a minimum, courses submitted for consideration must contain the following content:

- Preparing for homeownership (evaluate readiness to go from rental to homeownership)
- Budgeting (pre and post purchase)
- Credit counseling
- Shopping for a home
- Lender differences (predatory lending)

- Obtaining a mortgage (mortgage process, different types of mortgages)
- Loan closing (closing process, documentation, closing costs)
- Post-occupancy counseling (delinquency and foreclosure prevention)
- Life as a homeowner (homeowner warranties, maintenance, and repairs)

The Agency-selected panel will base their recommendation on the following considerations:

- Certificate of completion
- Fee (must be nominal)
- Duration
- Topics covered
- System features (chat function, bookmarks, start-stop, audio, etc.)
- Readability (level of complexity in language used)
- User Friendliness
- Bi-lingual Spanish
- Multi-lingual
- Pre/Post assessment of knowledge
- Attractiveness of site/course

Submission packages should include course background, copy of certificate of completion, price sheet, and contact information (name, phone number, and email address).

If an education provider wishes to be considered as a first or second format preference, they must express which one in their submission package, provide strong written justification, and supporting materials.

Dated: September 12, 2013.

**Richard A. Davis,**

*Acting Administrator, Rural Housing Service.*

[FR Doc. 2013-23032 Filed 9-20-13; 8:45 am]

BILLING CODE 3410-XV-P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Order No. 1915]

#### Approval for Manufacturing (Production) Authority, Foreign-Trade Zone 284, Liberty Pumps, Inc. (Submersible and Water Pumps), Bergen, New York

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Genesee Gateway Local Development Corporation, grantee of Foreign-Trade Zone 284, has requested manufacturing (production) authority on behalf of Liberty Pumps, Inc., within FTZ 284 in Bergen, New York (FTZ Docket 5-2012, filed 1-12-2012);

*Whereas*, notice inviting public comment has been given in the **Federal**

**Register** (77 FR 2957, 1-20-2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

*Now, therefore*, the Board hereby orders:

The application for manufacturing (production) authority under zone procedures within FTZ 284 on behalf of Liberty Pumps, Inc., as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 17th day of September 2013.

**Paul Piquado,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2013-23075 Filed 9-20-13; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[B-85-2013]

#### Foreign-Trade Zone (FTZ) 7—Mayaguez, Puerto Rico: Notification of Proposed Production Activity; Patheon Puerto Rico, Inc. (Pharmaceutical Products); Caguas and Manatí, Puerto Rico

The Puerto Rico Industrial Development Company, grantee of FTZ 7, submitted a notification of proposed production activity to the FTZ Board on behalf of Patheon Puerto Rico, Inc. (Patheon) (formerly MOVA Pharmaceutical Corporation), located in Caguas and Manatí, Puerto Rico. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on August 28, 2013.

Patheon already has authority to produce pharmaceutical products at both sites, located at Site 1—Parcel 2 within FTZ 7 in Caguas, and within Subzone 7L in Manatí, Puerto Rico. The current request would add a single input to Patheon's scope of authority (the associated final product is already in its scope). Pursuant to 15 CFR 400.14(b), additional FTZ authority

would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Patheon from applicable customs duty payments on the foreign status input, polyvinylpyrrolidone (Povidone) (duty rate, 5.3%) used in export production. On domestic sales, Patheon would be able to choose the duty rate during customs entry procedures that applies to MK-431A, a pharmaceutical product for the treatment of diabetes (duty free), for the polyvinylpyrrolidone and for the inputs in the existing scope of authority. Customs duties could also be deferred or reduced on foreign status production equipment.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 4, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230-0002, and in the "Reading Room" section of the Board's Web site, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz).

For further information, contact Diane Finver at [Diane.Finver@trade.gov](mailto:Diane.Finver@trade.gov) or (202) 482-1367.

Dated: September 17, 2013.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2013-23072 Filed 9-20-13; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-986]

#### Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* September 23, 2013.

**SUMMARY:** On May 3, 2013, the Department of Commerce ("Department") published its preliminary determination of sales at less than fair value ("LTFV") in the

antidumping duty investigation of hardwood and decorative plywood (“plywood”) from the People’s Republic of China (“PRC”).<sup>1</sup> We invited interested parties to comment on our preliminary determination of sales at LTFV. Based on our analysis of the comments we received, we have made changes to our preliminary determination. We determine that plywood from the PRC is being, or is likely to be, sold in the United States at LTFV, as provided in section 735 of the Tariff Act of 1930, as amended (“the Act”). The final dumping margins for this investigation are listed in the “Final Determination Margins” section below.

**FOR FURTHER INFORMATION CONTACT:** Katie Marksberry or Kabir Archuleta, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–7906 or (202) 482–2593, respectively.

#### **SUPPLEMENTARY INFORMATION:**

#### **Background**

The Department published its *Preliminary Determination* on May 3, 2013. On June 3, 2013, the Department published an extension of the final determination, and on June 11, 2013, the Department published a correction of the extension of the final determination.<sup>2</sup> Between June 17 and June 27, 2013, the Department received post-preliminary surrogate value and rebuttal surrogate value information from Petitioners,<sup>3</sup> Sanfortune<sup>4</sup> and the Jiangyang Group,<sup>5</sup> and Dehua TB.<sup>6</sup> The Department set separate briefing schedules for parties to address scope

related issues which pertain to both the antidumping and countervailing duty investigations and for parties to address general issues related to the antidumping duty investigation only. For a list of the parties that filed case and rebuttal briefs related to scope and general issues, see the Issues and Decision Memorandum.<sup>7</sup> On June 18, 2013, the Department held a public hearing limited to issues raised in scope related case and rebuttal briefs, and on July 18, 2013, the Department held a public hearing limited to issues raised in the general case and rebuttal briefs.

#### **Period of Investigation**

The period of investigation (“POI”) is January 1, 2012, through June 30, 2012. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was September 2012.<sup>8</sup>

#### **Verification**

As provided in section 782(i) of the Act, between May 27 and June 12, 2013, the Department verified the information submitted by Sanfortune and the Jiangyang Group for use in the final determination.<sup>9</sup> Verification reports were issued on June 21, 2013, and June 24, 2013. The Department used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

#### **Analysis of Comments Received**

All issues raised in the case and rebuttal briefs on scope and general issues by parties in this investigation are addressed in the Issues and Decision Memorandum.<sup>10</sup> A list of the issues that

parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration’s Antidumping and Countervailing Duty Centralized Electronic Service System (“IA ACCESS”). Access to IA ACCESS is available to registered users at <http://iaaccess.trade.gov>, and is available to all parties in the Central Records Unit, which is in room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at [www.trade.gov/ia](http://www.trade.gov/ia). The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

#### **Changes Since the Preliminary Determination**

##### *Changes Applicable to Multiple Companies*

- We changed our surrogate country selection from the Philippines to Bulgaria, and accordingly, we valued all inputs as well as financial ratios using Bulgarian surrogate values.<sup>11</sup>
- We made certain revisions to the language of the scope of the investigations in order to clarify the products that are covered by the scope of the antidumping and countervailing duty investigations.<sup>12</sup> All changes are reflected in the language of the scope as published below.

##### *Changes Specific to the Jiangyang Group*

- We excluded the Jiangyang Group’s salvage sales from its margin calculation.<sup>13</sup>
- We applied partial adverse facts available to certain sales made by the Jiangyang Group through a PRC reseller.<sup>14</sup>
- We revised the Jiangyang Group’s warehousing expenses.<sup>15</sup>

##### *Changes Specific to Sanfortune*

- We revised the spelling of Sanfortune’s company name in the U.S.

<sup>1</sup> See *Hardwood and Decorative Plywood From the People’s Republic of China: Antidumping Duty Investigation*, 78 FR 25946 (May 3, 2013) (“*Preliminary Determination*”).

<sup>2</sup> The Department postponed the deadline for the final determination to not later than 135 days after publication of the *Preliminary Determination* (i.e., September 15, 2013). See *Hardwood and Decorative Plywood From the People’s Republic of China: Correction of Postponement of Final Determination of Antidumping Duty Investigation and Countervailing Duty Investigations and Extension of Provisional Measures*, 78 FR at 34991. However, because September 15, 2013, falls on a non-business day, the revised deadline for this final determination is now September 16, 2013. See *Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

<sup>3</sup> The Coalition for Fair Trade of Hardwood Plywood.

<sup>4</sup> Linyi Sanfortune Wood Co., Ltd.

<sup>5</sup> Xuzhou Jiangyang Wood Industries Co., Ltd. and Xuzhou Jiangheng Wood Products Co., Ltd.

<sup>6</sup> Dehua TB Industry & Trade Limited and Zhejiang Dehua TB Import & Export Co., Ltd (collectively, “Dehua TB”).

<sup>7</sup> See Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, “Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Hardwood and Decorative Plywood from the People’s Republic of China” (September 16, 2013) (“*Issues and Decision Memorandum*”).

<sup>8</sup> See 19 CFR 351.204(b)(1).

<sup>9</sup> See the Department’s memorandum regarding: Verification of the Sales and Factors Responses of Xuzhou Jiangyang Wood Industries Co. Ltd and Xuzhou Jiangheng Wood Products Co. Ltd. in the Antidumping Duty Investigation of Hardwood and Decorative Plywood from the People’s Republic of China, dated June 21, 2013; the Department’s memorandum regarding: Verification of the Sales and Factors Responses of Linyi Sanfortune Wood Co., Ltd. in the Investigation of Hardwood and Decorative Plywood from the People’s Republic of China, dated June 21, 2013; see also the Department’s memorandum regarding: Verification of the CEP Sales Response of Xuzhou Jiangyang Wood Industries Co. Ltd and Xuzhou Jiangheng Wood Products Co. Ltd. in the Investigation of Hardwood and Decorative Plywood from the People’s Republic of China, dated June 24, 2013.

<sup>10</sup> See *Issues and Decision Memorandum*.

<sup>11</sup> See *Issues and Decision Memorandum* at Comment 7.

<sup>12</sup> See *id.* at Comment 6.

<sup>13</sup> See Memorandum to the File from Kabir Archuleta, International Trade Analyst, Office 9, through Catherine Bertrand, Program Manager, Office 9 “Antidumping Duty Investigation of Hardwood and Decorative Plywood from the People’s Republic of China: Final Analysis Memo for Jiangyang Group” dated concurrently with this notice at 4.

<sup>14</sup> See *Issues and Decision Memorandum* at Comment 12.

<sup>15</sup> See *id.* at Comment 13.

Customs and Border Protection instructions.<sup>16</sup>

For detailed information concerning all of the changes made, including those listed above, see Issues and Decision Memorandum, the company-specific analysis and SV memoranda.

### Scope of the Investigation

The merchandise subject to this investigation is hardwood and decorative plywood. Hardwood and decorative plywood is a flat panel composed of an assembly of two or more layers or plies of wood veneers in combination with a core. The veneers, along with the core, are glued or otherwise bonded together to form a finished product. A hardwood and decorative plywood panel must have face and back veneers which are composed of one or more species of hardwoods, softwoods, or bamboo. Hardwood and decorative plywood may include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP-1-2009.

All hardwood and decorative plywood is included within the scope of this investigation, without regard to dimension (overall thickness, thickness of face veneer, thickness of back veneer, thickness of core, thickness of inner veneers, width, or length). However, the most common panel sizes of hardwood and decorative plywood are 1219 x 1829 mm (48 x 72 inches), 1219 x 2438 mm (48 x 96 inches), and 1219 x 3048 mm (48 x 120 inches).

A “veneer” is a thin slice of wood which is rotary cut, sliced or sawed from a log, bolt or flitch. The face veneer is the exposed veneer of a hardwood and decorative plywood product which is of a superior grade than that of the back veneer, which is the other exposed veneer of the product (*i.e.*, as opposed to the inner veneers). When the two exposed veneers are of equal grade, either one can be considered the face or back veneer. For products that are entirely composed of veneer, such as Veneer Core Platforms, the exposed veneers are to be considered the face and back veneers, in accordance with the descriptions above.

The core of hardwood and decorative plywood consists of the layer or layers of one or more material(s) that are situated between the face and back veneers. The core may be composed of a range of materials, including but not limited to veneers, particleboard, and medium-density fiberboard (“MDF”).

All hardwood and decorative plywood is included within the scope of this investigation regardless of whether or not the face and/or back veneers are surface coated, unless the surface coating obscures the grain, texture or markings of the wood in a permanent manner. Examples of surface coatings which may not obscure the grain, texture or markings of the wood include, but are not limited to, ultra-violet light cured polyurethanes, oil or oil-modified or water based polyurethanes, wax, epoxy-ester finishes, and moisture-cured urethanes. Hardwood and decorative plywood that has face and/or back veneers which have a permanent and opaque surface coating which obscures the grain, texture or markings of the wood, are not included within the scope of this investigation. Examples of permanently affixed surface coatings which may obscure the grain, texture or markings of wood include, but are not limited to, paper, aluminum, high pressure laminate (“HPL”), MDF, medium density overlay (“MDO”), and phenolic film. Additionally, the face veneer of hardwood and decorative plywood may be sanded, smoothed or given a “distressed” appearance through such methods as hand-scraping or wire brushing. The face veneer may be stained.

The scope of the investigation excludes the following items: (1) structural plywood (also known as “industrial plywood” or “industrial panels”) that is manufactured and stamped to meet U.S. Products Standard PS 1-09, PS 2-09, or PS 2-10 for Structural Plywood (including any revisions to that standard or any substantially equivalent international standard intended for structural plywood), including but not limited to the “bond performance” requirements set forth at paragraph 5.8.6.4 of that Standard and the performance criteria detailed at Table 4 through 10 of that Standard; (2) products which have a face and back veneer of cork; (3) multilayered wood flooring, as described in the antidumping duty and countervailing duty orders on Multilayered Wood Flooring from the People’s Republic of China, Import Administration, International Trade Administration, U.S. Department of Commerce Investigation Nos. A-570-970 and C-570-971 (published December 8, 2011), and additionally, multilayered wood flooring with a face veneer of bamboo or composed entirely of bamboo; (4) plywood which has a shape or design other than a flat panel; (5) products made entirely from bamboo

and adhesives (also known as “solid bamboo”).

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (“HTSUS”): 4412.10.0500; 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.2510; 4412.32.2520; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.10.9000; 4412.31.4080; 4412.32.0570; 4412.32.2530; 4412.94.5100; 4412.94.9500; 4412.99.5115; and 4412.99.9500.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise as set forth herein is dispositive.

### Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation.<sup>17</sup> This practice is described in Policy Bulletin 05.1, available at <http://www.trade.gov/ia/>.

<sup>17</sup> See *Hardwood and Decorative Plywood From the People’s Republic of China: Initiation of Antidumping Duty Investigation*, 77 FR 65172 (October 25, 2012) (“*Initiation Notice*”).

<sup>16</sup> See Issues and Decision Memorandum at Comment 17.

**Final Determination**

Because the PRC-wide entity did not provide the Department with requested

information, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find it appropriate to base the PRC-wide rate on facts available.<sup>18</sup>

The Department determines that the following weighted-average dumping margins exist for the period January 1, 2012, through June 30, 2012.

| Exporter  | Producer   | Percent margin |
|---|--|----------------|
| Linyi Sanfortune Wood Co., Ltd .....              | Linyi Sanfortune Wood Co., Ltd .....                           | 55.76          |
| Jiangyang Group <sup>19</sup> .....               | Jiangyang Group .....  | 62.55          |
| Anhui Tiansen Trading Co., Ltd .....              | Linyi City Fei County Jianxin Boards Factory .....             | 59.46          |
| Anhui Tiansen Trading Co., Ltd .....              | Xuzhou Dayuan Wooden Industry Co., Ltd .....                   | 59.46          |
| Anhui Tiansen Trading Co., Ltd .....              | Linyi Yiming Wooden Industry Co., Ltd .....                    | 59.46          |
| Anhui Tiansen Trading Co., Ltd .....              | Linyi Xicheng Wooden Industry Co., Ltd .....                   | 59.46          |
| Anhui Tiansen Trading Co., Ltd .....              | Linyi Dazhong Wooden Industry Co., Ltd .....                   | 59.46          |
| Anhui Wanmu Wood Co., Ltd .....                   | Anhui Wanmu Wood Co., Ltd .....                                | 59.46          |
| Anhui Xinyuanda Wood Co., Ltd .....               | Anhui Xinyuanda Wood Co., Ltd .....                            | 59.46          |
| Anji Hefeng Bamboo & Wood Industry Co., Ltd ..... | Anji Hefeng Bamboo & Wood Industry Co., Ltd .....              | 59.46          |
| Anji Qichen Bamboo Industry Co., Ltd .....        | Anji Qichen Bamboo Industry Co., Ltd .....                     | 59.46          |
| Bergey (Tianjin) International Co., Ltd .....     | Linyi Huifeng Wood Industry Co., Ltd .....                     | 59.46          |
| Bergey (Tianjin) International Co., Ltd .....     | Suqian City Santai Wood Industry Co., Ltd .....                | 59.46          |
| Bergey (Tianjin) International Co., Ltd .....     | Jiangsu Shuren Wood Industry Co., Ltd .....                    | 59.46          |
| Celtic Co., Ltd .....                             | Linyi Celtic Wood Co., Ltd .....                               | 59.46          |
| Cosco Star International Co., Ltd .....           | Deqing Shengqiang Wood Co., Ltd .....                          | 59.46          |
| Cosco Star International Co., A427Ltd .....       | Zhejiang Shenghua Yunfeng Import & Export Co., Ltd .....       | 59.46          |
| Cosco Star International Co., Ltd .....           | Linyi Huasheng Yongbin Wood Corp. ....                         | 59.46          |
| Cosco Star International Co., Ltd .....           | Xuzhou Pengyu Wood Products Co., Ltd .....                     | 59.46          |
| Cosco Star International Co., Ltd .....           | Pizhou Jiangshan Wood Co., Ltd .....                           | 59.46          |
| Cosco Star International Co., Ltd .....           | Shandong Union Wood Co., Ltd .....                             | 59.46          |
| Cosco Star International Co., Ltd .....           | Linyi Sanfortune Wood Co. Ltd .....                            | 59.46          |
| Cosco Star International Co., Ltd .....           | Shandong Anxin Timber Co., Ltd .....                           | 59.46          |
| Cosco Star International Co., Ltd .....           | Yinyi Evergreen Wood Co., Ltd .....                            | 59.46          |
| Cosco Star International Co., Ltd .....           | Shandong Huaxin Jiasheng Wood Co., Ltd .....                   | 59.46          |
| Cosco Star International Co., Ltd .....           | Shandong Ruichen Wood Co., Ltd .....                           | 59.46          |
| Cosco Star International Co., Ltd .....           | Linyi Tian He Wooden Industry Co., Ltd .....                   | 59.46          |
| Cosco Star International Co., Ltd .....           | Jiangsu Vermont Wood Products Co., Ltd .....                   | 59.46          |
| Cosco Star International Co., Ltd .....           | Xuzhou Shenghe Wood Co., Ltd .....                             | 59.46          |
| Cosco Star International Co., Ltd .....           | Jiangsu Dongjia Wood Co., Ltd .....                            | 59.46          |
| Cosco Star International Co., Ltd .....           | Linyi Laiyi Timber Industry Co., Ltd .....                     | 59.46          |
| Cosco Star International Co., Ltd .....           | Feixian Hongqiang Wood Co., Ltd .....                          | 59.46          |
| Cosco Star International Co., Ltd .....           | Suqian Chuangyuan Decoration Material Co., Ltd .....           | 59.46          |
| Cosco Star International Co., Ltd .....           | Linyi Delihe Wood Co., Ltd .....                               | 59.46          |
| Cosco Star International Co., Ltd .....           | Linyi Mingdian Wood Co., Ltd .....                             | 59.46          |
| Cosco Star International Co., Ltd .....           | Su Qian Xin Yuan Lin Wooden Co., Ltd .....                     | 59.46          |
| Cosco Star International Co., Ltd .....           | Linyi Hengda Wood Factory. ....                                | 59.46          |
| Dehua Tb Industry & Trade Company Limited .....   | Zhejiang Jufeng Wood Co., Ltd .....                            | 59.46          |
| Dehua Tb Industry & Trade Company Limited .....   | Dehua Tb New Decoration Material Co., Ltd .....                | 59.46          |
| Dehua Tb Industry & Trade Company Limited .....   | Zhangjiagang Jiuli Wood Co., Ltd .....                         | 59.46          |
| Deqing Dajiang Import And Export Co., Ltd .....   | Fengxian Fangyuan Wood Industry Co., Ltd .....                 | 59.46          |
| Deqing Dajiang Import And Export Co., Ltd .....   | Linyi Rui Tong Wood Co., Ltd .....                             | 59.46          |
| Deqing Dajiang Import And Export Co., Ltd .....   | Linyi Tongxin Wood Industry Co., Ltd .....                     | 59.46          |
| Deqing Dajiang Import And Export Co., Ltd .....   | Zhucheng Huifeng Wood Industry Co., Ltd .....                  | 59.46          |
| Deqing Dajiang Import And Export Co., Ltd .....   | Linyi Jiatai Wood Industry Co., Ltd .....                      | 59.46          |
| Deqing Dajiang Import And Export Co., Ltd .....   | Linyi City Lanshan District Qifeng Wood Factory .....          | 59.46          |
| Fengxian Fangyuan Wood Co., Ltd .....             | Fengxian Fangyuan Wood Co., Ltd .....                          | 59.46          |
| G. D. ENTERPRISE LIMITED .....                    | International Wood Products (Kunshan) Co., Ltd .....           | 59.46          |
| Green Link International Corp. ....               | Jiangsu Vermont Wood Products Co., Ltd .....                   | 59.46          |
| Green Link International Corp. ....               | Suzhou Dongsheng Wood Products Co., Ltd .....                  | 59.46          |
| Green Link International Corp. ....               | Suzhou Dongda Wood Co., Ltd .....                              | 59.46          |
| Green Link International Corp. ....               | Linyi Jiahe Wood Industry Co., Ltd .....                       | 59.46          |
| Green Link International Corp. ....               | Linyi Tianhe Wooden Industry Co., Ltd .....                    | 59.46          |
| Green Link International Corp. ....               | Fengxian Fangyuan Wood Co., Ltd .....                          | 59.46          |
| Green Link International Corp. ....               | Xuzhou Pengyu Wood Products Co., Ltd .....                     | 59.46          |
| Green Link International Corp. ....               | Yinhe Machinery Chemical Limited Company of Shandong Province. | 59.46          |
| Green Link International Corp. ....               | Yishuihontai Wood-Made Co., Ltd .....                          | 59.46          |
| Green Link International Corp. ....               | Xuzhou Fuxin Wood Products Co., Ltd .....                      | 59.46          |
| Green Link International Corp. ....               | Feixian Tanyi Youchengjiafu Wood Products, Co., Ltd .....      | 59.46          |
| Green Link International Corp. ....               | Feixian Xingying Wood Products Co., Ltd .....                  | 59.46          |
| Green Link International Corp. ....               | Feixian Tanyi Hongtaiyang Wood Products Co., Ltd .....         | 59.46          |
| Green Link International Corp. ....               | Shandong Union Wood Co., Ltd .....                             | 59.46          |
| Green Link International Corp. ....               | Xinyi Chaohua Wood Products Co., Ltd .....                     | 59.46          |
| Green Link International Corp. ....               | Feixian Hongsheng Wood Products Co., Ltd .....                 | 59.46          |
| Green Link International Corp. ....               | Shandong Ningjin Runkang Wood Products Co., Ltd .....          | 59.46          |

<sup>18</sup> See Issues and Decision Memorandum at 6–8.

| Exporter  | Producer   | Percent margin |
|---|--|----------------|
| Green Link International Corp. ....                           | Linyi Dahua Wood Product Co., Ltd .....                            | 59.46          |
| Green Link International Corp. ....                           | Shandong Zhengda Industry and Trad Development Co., Ltd ...        | 59.46          |
| Green Link International Corp. ....                           | Feixian Longmen Plywood Co., Ltd .....                             | 59.46          |
| Green Link International Corp. ....                           | Linyi Huasheng Yongbin Wood Co., Ltd .....                         | 59.46          |
| Green Link International Corp. ....                           | Linyi Jiacheng Wood Products Co., Ltd .....                        | 59.46          |
| Green Link International Corp. ....                           | Yutai Zezhong Wood Product Co., Ltd .....                          | 59.46          |
| Green Link International Corp. ....                           | Linyi Qianfeng Wood Products Co., Ltd .....                        | 59.46          |
| Green Link International Corp. ....                           | Xuzhou Yujinfang Wood Products Co., Ltd .....                      | 59.46          |
| Green Link International Corp. ....                           | Fengxian Zhongtuo Wood Co., Ltd .....                              | 59.46          |
| Green Link International Corp. ....                           | Linyi Jinqiu Wood Products Co., Ltd .....                          | 59.46          |
| Green Link International Corp. ....                           | Linyi Laite Plywood Factory .....                                  | 59.46          |
| Green Link International Corp. ....                           | Linyi City Lanshan District Yixing Wood Products Co., Ltd .....    | 59.46          |
| Green Link International Corp. ....                           | Xuzhou Qinyi Wood Products Co., Ltd .....                          | 59.46          |
| Green Link International Corp. ....                           | Linyi Linhai Wood Co., Ltd .....                                   | 59.46          |
| Green Link International Corp. ....                           | Linyi Qunshan Wood Products Co., Ltd .....                         | 59.46          |
| Green Link International Corp. ....                           | Linyi Hongpanyong Wood Products Co., Ltd .....                     | 59.46          |
| Green Link International Corp. ....                           | Feixian Guangyuan Wood Products Co., Ltd .....                     | 59.46          |
| Guangxi Guixun Panel Co. ....                                 | Guangxi Guixun Panel Co. ....                                      | 59.46          |
| Highland Industries Inc. ....                                 | Linyi Lanshan District Linyu Wood Board Plant .....                | 59.46          |
| Highland Industries Inc. ....                                 | Feixian Jinhao Wood Board Plant. ....                              | 59.46          |
| Highland Industries Inc. ....                                 | Feixian Tanyi Youcheng Jiafu Wood Factory .....                    | 59.46          |
| Highland Industries Inc. ....                                 | Feixian Tanyi Xinhengda Multilayer Wood Plant .....                | 59.46          |
| Highland Industries Inc. ....                                 | Hanlin Timber Products Company Ltd .....                           | 59.46          |
| Highland Industries Inc. ....                                 | Jiangsu Suyuan Wood Company Ltd .....                              | 59.46          |
| Highland Industries Inc. ....                                 | Linyi Feihong Wood Co., Ltd .....                                  | 59.46          |
| Highland Industries Inc. ....                                 | Linyi Hongde Wood Co., Ltd .....                                   | 59.46          |
| Highland Industries Inc. ....                                 | Linyi Huasheng Yongbin Wood Co., Ltd .....                         | 59.46          |
| Highland Industries Inc. ....                                 | Linyi Jinghua Wood Ltd .....                                       | 59.46          |
| Highland Industries Inc. ....                                 | Linyi Maoling Wood Board Plant. ....                               | 59.46          |
| Highland Industries Inc. ....                                 | Linyi Quanjin Wood Co., Ltd .....                                  | 59.46          |
| Highland Industries Inc. ....                                 | Linyi Yongguo Wood Board Plant .....                               | 59.46          |
| Highland Industries Inc. ....                                 | Linyi Zhangcheng Wood Co., Ltd .....                               | 59.46          |
| Highland Industries Inc. ....                                 | Pingyi Futian Wood Board Plant. ....                               | 59.46          |
| Highland Industries Inc. ....                                 | Qiangsheng Wood Co., Ltd .....                                     | 59.46          |
| Highland Industries Inc. ....                                 | Shandong Union Wood .....  | 59.46          |
| Highland Industries Inc. ....                                 | Shenghe Wood Company Ltd .....                                     | 59.46          |
| Highland Industries Inc. ....                                 | Yishui Jinpeng Wood Co., Ltd .....                                 | 59.46          |
| Huainan Mengping Import and Export Co., Ltd .....             | Linyi Qianfeng Panel Factory Co., Ltd .....                        | 59.46          |
| Huainan Mengping Import and Export Co., Ltd .....             | Linyi Dazhong Wood Co., Ltd .....                                  | 59.46          |
| Jiangsu Dilun International Trading Co., Ltd .....            | Xuzhou Weilin Wood Co. Ltd (Weilin) .....                          | 59.46          |
| Jiangsu Eastern Shengxin International Trading Co., Ltd ..... | Xuzhou Huana Eraor Wood Co. Ltd .....                              | 59.46          |
| Jiangsu Eastern Shengxin International Trading Co., Ltd ..... | Xuzhou Meilinsen Wood Wood Co. Ltd .....                           | 59.46          |
| Jiangsu Eastern Shengxin International Trading Co., Ltd ..... | Xuzhou Senya Wood Co. Ltd .....                                    | 59.46          |
| Jiangsu Happy Wood Industrial Group Co., Ltd .....            | Jiangsu Happy Wood Industrial Group Co., Ltd .....                 | 59.46          |
| Jiangsu Shengyang Industrial Joint Stock Co., Ltd .....       | Jiangsu Shengyang Industrial Joint Stock Co., Ltd .....            | 59.46          |
| Jiangsu Simba Flooring Co., Ltd .....                         | Yixing Lion-King Timber Industry Co., Ltd .....                    | 59.46          |
| Jiangsu Simba Flooring Co., Ltd .....                         | Jiangsu Simba Flooring Co., Ltd .....                              | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Linyi Youcheng Jiafu Wood Products Co., Ltd .....                  | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Linyi Xingying Wood Products Co., Ltd .....                        | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Fengxian Jihe Wood Products Co., Ltd .....                         | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Fengxian Zhongtuo Woods Co., Ltd .....                             | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Linyi Huajun Wood Products Co., Ltd .....                          | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Shandong Junxing Woods Co., Ltd .....                              | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Linyi Hongtaiyang Woods Co., Ltd .....                             | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Linyi Zhenyuan Wood Products Co., Ltd .....                        | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Linyi Xicheng Wood Products Co., Ltd .....                         | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Linyi Dongfang Juxin Wood Co., Ltd .....                           | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Linyi Huifeng Wood Industry Co., Ltd .....                         | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Xuzhou Zhongcai Wood Co., Ltd .....                                | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Fengxian Fangyuan Wood Co., Ltd .....                              | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Xuzhou Dayuan Wood Factory .....                                   | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Linyi Dashun Wood Co., Ltd .....                                   | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Pingyi Futian Wood Co., Ltd .....                                  | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Pingyi Xinda Wood Factory .....                                    | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Linyi Jiuda Wood Co., Ltd .....                                    | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Linyi Laite Wood Factory .....                                     | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Linyi Ruichen Wood Co., Ltd .....                                  | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Linyi City Lanshan District Fubao Wood Factory .....               | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Linyi Linyu Wood Factory .....                                     | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Linyi Shunda Wood Factory .....                                    | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Linyi City Lanshan District Bancheng Town Yulin Wood Factory ..... | 59.46          |
| Jiangsu Top Point International Co., Ltd .....                | Qufu Shengtai Super Plywood Ltd .....                              | 59.46          |
| Jiangsu Vermont Wood Products Co., Ltd .....                  | Jiangsu Vermont Wood Products Co., Ltd .....                       | 59.46          |

| Exporter   | Producer   | Percent margin |
|--|--|----------------|
| Jiangsu Vermont Wood Products Co., Ltd .....               | Jiangsu Vermont Wood Products Co., Ltd .....               | 59.46          |
| Jiashan Dalin Wood Industry Co., Ltd .....                 | Jiashan Dalin Wood Industry Co., Ltd .....                 | 59.46          |
| Jiaxing Brilliant Import & Export Co., Ltd .....           | Jiaxing Layo Decoration Materials Co., Ltd .....           | 59.46          |
| Jiaxing Gsun Imp. & Exp. Co., Ltd .....                    | Linyi Linhai Wood Co., Ltd .....                           | 59.46          |
| Jiaxing Gsun Imp. & Exp. Co., Ltd .....                    | Shandong Fengtai Wood Co., Ltd .....                       | 59.46          |
| Jiaxing Gsun Imp. & Exp. Co., Ltd .....                    | Feixian Hongsheng Wood Co., Ltd .....                      | 59.46          |
| Jiaxing Gsun Imp. & Exp. Co., Ltd .....                    | Linyi Jianxin Wood Co., Ltd .....                          | 59.46          |
| Jiaxing Gsun Imp. & Exp. Co., Ltd .....                    | Linyi Dayong Wood Co., Ltd .....                           | 59.46          |
| Jiaxing Gsun Imp. & Exp. Co., Ltd .....                    | Linyi Yutai Timber Co., Ltd .....                          | 59.46          |
| Jiaxing Gsun Imp. & Exp. Co., Ltd .....                    | Zhucheng Huifeng Wood Industry Co., Ltd .....              | 59.46          |
| Jiaxing Gsun Imp. & Exp. Co., Ltd .....                    | Linyi Dashun Wood Co., Ltd .....                           | 59.46          |
| Jiaxing Gsun Imp. & Exp. Co., Ltd .....                    | Linyi Huifeng Wood Industry Co., Ltd .....                 | 59.46          |
| Jiaxing Gsun Imp. & Exp. Co., Ltd .....                    | Linyi Qunxiang Wood Co., Ltd .....                         | 59.46          |
| Jiaxing Hengtong Wood Co., Ltd .....                       | Jiaxing Hengtong Wood Co., Ltd .....                       | 59.46          |
| Jiaxing Kaochuan Woodwork Co., Ltd .....                   | Jiaxing Kaochuan Woodwork Co., Ltd .....                   | 59.46          |
| Joc Yuntai International Trading Co., Ltd .....            | Linyi Huasheng Yongbin Wood Corp. ....                     | 59.46          |
| Joc Yuntai International Trading Co., Ltd .....            | Fengxian Jihe Wood Co., Ltd .....                          | 59.46          |
| Joc Yuntai International Trading Co., Ltd .....            | Xuzhou Dayuan Wood Factory .....                           | 59.46          |
| Joc Yuntai International Trading Co., Ltd .....            | Linyi Linyu Wood Factory .....                             | 59.46          |
| Joc Yuntai International Trading Co., Ltd .....            | Linyi Lanshan District Fubo Woods Factory .....            | 59.46          |
| Langfang Baomujie Wood Co., Ltd .....                      | Langfang Baomujie Wood Co., Ltd .....                      | 59.46          |
| Larkcop International Co., Ltd .....                       | Xuzhou Camry Wood Co., Ltd .....                           | 59.46          |
| Leadwood Industrial Corp .....                             | Leadwood Industrial Corp .....                             | 59.46          |
| Lianyungang Penghai International Trading Co., Ltd .....   | Linyi Linxiang Boards Factory .....                        | 59.46          |
| Lianyungang Yuntai International Trade Co., Ltd .....      | Linyi Huifeng Wood Industry Co., Ltd .....                 | 59.46          |
| Lianyungang Yuntai International Trade Co., Ltd .....      | Shandong Union Wood Co., Ltd .....                         | 59.46          |
| Lianyungang Yuntai International Trade Co., Ltd .....      | Linyi Ruichen Economy And Trade Co., Ltd .....             | 59.46          |
| Lianyungang Yuntai International Trade Co., Ltd .....      | Linyi Jinghua Wood Co., Ltd .....                          | 59.46          |
| Lianyungang Yuntai International Trade Co., Ltd .....      | Pizhou Jiangshan Wood Co., Ltd .....                       | 59.46          |
| Lianyungang Yuntai International Trade Co., Ltd .....      | Xuzhou Longyuan Wood Co., Ltd .....                        | 59.46          |
| Lianyungang Yuntai International Trade Co., Ltd .....      | Xuzhou Zhongcai Wood Co., Ltd .....                        | 59.46          |
| Lianyungang Yuntai International Trade Co., Ltd .....      | Linyi Baoshan Wood Co., Ltd .....                          | 59.46          |
| Lianyungang Yuntai International Trade Co., Ltd .....      | Linyi Quanjin Wood Co., Ltd .....                          | 59.46          |
| Lianyungang Yuntai International Trade Co., Ltd .....      | Shandong Compete Wood Co., Ltd .....                       | 59.46          |
| Lianyungang Yuntai International Trade Co., Ltd .....      | Xinyi Chaohua Wood Co., Ltd .....                          | 59.46          |
| Lianyungang Yuntai International Trade Co., Ltd .....      | Feixian Hongqiang Wood Co., Ltd .....                      | 59.46          |
| Lianyungang Yuntai International Trade Co., Ltd .....      | Xinyi Lujiang Wood Co., Ltd .....                          | 59.46          |
| Lianyungang Yuntai International Trade Co., Ltd .....      | Linyi Dashun Woods Co., Ltd .....                          | 59.46          |
| Lianyungang Yuntai International Trade Co., Ltd .....      | Pizhou Jinguoyuan Wood Co., Ltd .....                      | 59.46          |
| Lianyungang Yuntai International Trade Co., Ltd .....      | Lingyi Huasheng Yongbin Wood Co., Ltd .....                | 59.46          |
| Lingyi Huasheng Yongbin Wood Co., Ltd .....                | Linyi Anshun Timber Co., Ltd .....                         | 59.46          |
| Linyi Anshun Timber Co., Ltd .....                         | Linyi City Dongfang Jinxin Economic & Trade Co., Ltd ..... | 59.46          |
| Linyi City Dongfang Jinxin Economic & Trade Co., Ltd ..... | Linyi City Dongfang Jinxin Economic & Trade Co., Ltd ..... | 59.46          |
| Linyi Dahua Wood Co., Ltd .....                            | Linyi Dahua Wood Co., Ltd .....                            | 59.46          |
| Linyi Dongfangjuxin Wood Co., Ltd .....                    | Linyi Dongfangjuxin Wood Co., Ltd .....                    | 59.46          |
| Linyi Evergreen Wood Co., Ltd .....                        | Linyi Evergreen Wood Co., Ltd .....                        | 59.46          |
| Linyi Glary Plywood Co., Ltd .....                         | Linyi Glary Plywood Co., Ltd .....                         | 59.46          |
| Linyi Hengsheng Wood Industry Co., Ltd .....               | Linyi Hengsheng Wood Industry Co., Ltd .....               | 59.46          |
| Linyi Huifeng Wood Industry Co., Ltd .....                 | Linyi Huifeng Wood Industry Co., Ltd .....                 | 59.46          |
| Linyi Jiahe Wood Industry Co., Ltd .....                   | Linyi Jiahe Wood Industry Co., Ltd .....                   | 59.46          |
| Linyi Kaier International Trade Co., Ltd .....             | Linyi Lianyi Wood Co., Ltd .....                           | 59.46          |
| Linyi King Import And Export Co., Ltd .....                | Linyi Celtic Wood Co., Ltd .....                           | 59.46          |
| Linyi Linhai Wood Co., Ltd .....                           | Linyi Linhai Wood Co., Ltd .....                           | 59.46          |
| Linyi Mingzhu Wood Co., Ltd .....                          | Linyi Mingzhu Wood Co., Ltd .....                          | 59.46          |
| Linyi Tianhe Wooden Industry Co., Ltd .....                | Linyi Tianhe Wooden Industry Co., Ltd .....                | 59.46          |
| Linyi Zhongtai Import And Export Co., Ltd .....            | Linyi Cathay Pacific Wood Factory .....                    | 59.46          |
| Pacific Plywood Co., Ltd .....                             | Pacific Plywood Co., Ltd .....                             | 59.46          |
| Pingyi Jinniu Wood Co., Ltd .....                          | Pingyi Jinniu Wood Co., Ltd .....                          | 59.46          |
| Pizhou Hengxing International Trade Co., Ltd .....         | Xuzhou Fuyuan Wood Co., Ltd .....                          | 59.46          |
| Qingdao King Sports Products Technology Co., Ltd .....     | Anhui Fuyang Qinglin Wood Products Co., Ltd .....          | 59.46          |
| Qingdao King Sports Products Technology Co., Ltd .....     | Feixian Tanyi Youchengjiafu Wood Products Co., Ltd .....   | 59.46          |
| Qingdao King Sports Products Technology Co., Ltd .....     | Fengxian Jihe Wood Products Co., Ltd .....                 | 59.46          |
| Qingdao King Sports Products Technology Co., Ltd .....     | Feixian Longmen Wood Products Co., Ltd .....               | 59.46          |
| Qingdao King Sports Products Technology Co., Ltd .....     | Linyi Xicheng Wood Products Co., Ltd .....                 | 59.46          |
| Qingdao King Sports Products Technology Co., Ltd .....     | Feixian Guangyuan Wood Products Co., Ltd .....             | 59.46          |
| Qingdao King Sports Products Technology Co., Ltd .....     | Linyi Huifeng Wood Industry Co., Ltd .....                 | 59.46          |
| Qingdao King Sports Products Technology Co., Ltd .....     | Cangshan Hongrui Wood Products Co., Ltd .....              | 59.46          |
| Qingdao King Sports Products Technology Co., Ltd .....     | Shandong Union Wood Co., Ltd .....                         | 59.46          |
| Qingdao King Sports Products Technology Co., Ltd .....     | Xinyi Chaohua Wood Products Co., Ltd .....                 | 59.46          |
| Qingdao King Sports Products Technology Co., Ltd .....     | Fengxian Zhongtuo Wood Products Co., Ltd .....             | 59.46          |
| Qingdao King Sports Products Technology Co., Ltd .....     | Fengxian Shuangxingyuan Wood Products Co., Ltd .....       | 59.46          |
| Qingdao King Sports Products Technology Co., Ltd .....     | Yutai Zezhong Wood Products Co., Ltd .....                 | 59.46          |
| Qingdao King Sports Products Technology Co., Ltd .....     | Linyi Qiangsheng Wood Products Co., Ltd .....              | 59.46          |

| Exporter   | Producer   | Percent margin |
|--|--|----------------|
| Qingdao King Sports Products Technology Co., Ltd ..... | Shandong Lufeng Chaoyang Wood Products Co., Ltd .....                    | 59.46          |
| Qingdao King Sports Products Technology Co., Ltd ..... | Linyi Junxing Wood Products Co., Ltd .....                               | 59.46          |
| Qingdao King Sports Products Technology Co., Ltd ..... | Linyi Yiming Wood Products Co., Ltd .....                                | 59.46          |
| Qingdao King Sports Products Technology Co., Ltd ..... | Linyi Jianping Wood Products Co., Ltd .....                              | 59.46          |
| Qingdao King Sports Products Technology Co., Ltd ..... | Linyi Feihong Wood Products Co., Ltd .....                               | 59.46          |
| Qingdao King Sports Products Technology Co., Ltd ..... | Linyi Jinghua Wood Co., Ltd .....  | 59.46          |
| Qingdao King Sports Products Technology Co., Ltd ..... | Fengxian Zhongtuo Wood Co., Ltd .....                                    | 59.46          |
| Qingdao Top P&Q International Corp .....               | Feixian Tanyi Youchengjiafu Wood Products Co., Ltd .....                 | 59.46          |
| Qingdao Top P&Q International Corp .....               | Feixian Xingying Wood Products Co., Ltd .....                            | 59.46          |
| Qingdao Top P&Q International Corp .....               | Feixian Tanyi Hongtaiyang Wood Products Co., Ltd .....                   | 59.46          |
| Qingdao Top P&Q International Corp .....               | Shandong Union Wood Co., Ltd .....                                       | 59.46          |
| Qingdao Top P&Q International Corp .....               | Xinyi Chaohua Wood Products Co., Ltd .....                               | 59.46          |
| Qingdao Top P&Q International Corp .....               | Feixian Hongsheng Wood Products Co., Ltd .....                           | 59.46          |
| Qingdao Top P&Q International Corp .....               | Shandong Ningjin Runkang Wood Products Co., Ltd .....                    | 59.46          |
| Qingdao Top P&Q International Corp .....               | Linyi Dahua Wood Product Co., Ltd .....                                  | 59.46          |
| Qingdao Top P&Q International Corp .....               | Shandong Zhengda Industry And Trad Development Co., Ltd .....            | 59.46          |
| Qingdao Top P&Q International Corp .....               | Feixian Longmen Plywood Co., Ltd .....                                   | 59.46          |
| Qingdao Top P&Q International Corp .....               | Linyi Huasheng Yongbin Wood Co., Ltd .....                               | 59.46          |
| Qingdao Top P&Q International Corp .....               | Linyi Jiacheng Wood Products Co., Ltd .....                              | 59.46          |
| Qingdao Top P&Q International Corp .....               | Yutai Zezhong Wood Product Co., Ltd .....                                | 59.46          |
| Qingdao Top P&Q International Corp .....               | Linyi Qianfeng Wood Products Co., Ltd .....                              | 59.46          |
| Qingdao Top P&Q International Corp .....               | Xuzhou Yujinfang Wood Products Co., Ltd .....                            | 59.46          |
| Qingdao Top P&Q International Corp .....               | Fengxian Zhongtuo Wood Co., Ltd .....                                    | 59.46          |
| Qingdao Top P&Q International Corp .....               | Linyi Jinqu Wood Products Co., Ltd .....                                 | 59.46          |
| Qingdao Top P&Q International Corp .....               | Linyi Laite Plywood Factory .....  | 59.46          |
| Qingdao Top P&Q International Corp .....               | Linyi City Lanshan District Yixing Wood Products Co., Ltd .....          | 59.46          |
| Qingdao Top P&Q International Corp .....               | Xuzhou Qinyi Wood Products Co., Ltd .....                                | 59.46          |
| Qingdao Top P&Q International Corp .....               | Linyi Linhai Wood Co., Ltd .....   | 59.46          |
| Qingdao Top P&Q International Corp .....               | Linyi Qunshan Wood Products Co., Ltd .....                               | 59.46          |
| Qingdao Top P&Q International Corp .....               | Linyi Hongpanyong Wood Products Co., Ltd .....                           | 59.46          |
| Qingdao Top P&Q International Corp .....               | Feixian Guangyuan Wood Products Co., Ltd .....                           | 59.46          |
| Qufu Luhan Woodwork Co., Ltd .....                     | Qufu Luhan Woodwork Co., Ltd .....                                       | 59.46          |
| Qufu Shengfu Wood Work Co., Ltd .....                  | Qufu Shengfu Wood Work Co., Ltd .....                                    | 59.46          |
| Shandong Anxin Timber Co., Ltd .....                   | Shandong Anxin Timber Co., Ltd .....                                     | 59.46          |
| Shandong Jinli Imp.&Exp. Co., Ltd .....                | Shandong Province Shouguang City Houzhen Town Fuli Plywood Factory ..... | 59.46          |
| Shandong Qishan International Trading Co., Ltd .....   | Linyi Tuopu Zhixin Wooden Industry Co., Ltd .....                        | 59.46          |
| Shandong Qishan International Trading Co., Ltd .....   | Cangshan County Hongrui Wooden Industry Co., Ltd .....                   | 59.46          |
| Shandong Union Wood Co., Ltd .....                     | Shandong Union Wood Co., Ltd .....                                       | 59.46          |
| Shandong Xingang Group .....                           | Shandong Xingang Group .....   | 59.46          |
| Shandong Huaxin Jiasheng Wood Co., Ltd .....           | Shandong Huaxin Jiasheng Wood Co., Ltd .....                             | 59.46          |
| Shanghai Aviation Import & Export Co., Ltd .....       | Zhonglin Enterprise (Dangshan) Co., Ltd .....                            | 59.46          |
| Shanghai Aviation Import & Export Co., Ltd .....       | Pingyi County Futian Boards Factory .....                                | 59.46          |
| Shanghai Aviation Import & Export Co., Ltd .....       | Shandong Zhengda Industrial Development Co., Ltd .....                   | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Linyi Jinghua Wood Co., Ltd .....  | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Linyi Lianbang Wood Co., Ltd .....                                       | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Linyi Jiacheng Wood Co., Ltd .....                                       | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Shandong Fengtai Wood Co., Ltd .....                                     | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Linyi Huada Wood Co., Ltd .....  | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Linyi Mingzhu Wood Co., Ltd .....  | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Linyi Jinkun Wood Co., Ltd .....   | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Linyi Tenghu Wood Co., Ltd .....   | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Linyi Kaifeng Wooden Boards Factory .....                                | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Linyi Laite Boards Factory .....   | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Linyi Yuqiao Boards Factory .....  | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Yishui Senbao Wood Co., Ltd .....  | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Yishui Zhili Wood Co., Ltd .....   | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Linyi Tuopu Zhixin Wooden Industry Co., Ltd .....                        | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Shandong Lufeng Chaoyang Wood Co., Ltd .....                             | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Shandong Huaxin Jiasheng Wood Co., Ltd .....                             | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Yishui Hongtai Wood Co., Ltd .....                                       | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Feixian Huafeng Wood Co., Ltd .....                                      | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Linyi Geluobao Artificial Board Factory .....                            | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Linyi Futai Wood Co., Ltd .....  | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Linyi Yutai Wood Co., Ltd .....  | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Feixian Yuansen Composite Board Factory .....                            | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Linyi Xincheng Wooden Products General Factory, Feixian Branch .....     | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Linyi Xinli Wood Co., Ltd .....  | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Linyi Zhongxinsen Wood Co., Ltd .....                                    | 59.46          |
| Shanghai Futuwood Trading Co., Ltd .....               | Mengyin Hongxin Wood Co., Ltd .....                                      | 59.46          |
| Shanghai Luli Trading Co., Ltd .....                   | Feixian Tanyi Town Hongtaiyang Wood Co., Ltd .....                       | 59.46          |
| Shanghai Luli Trading Co., Ltd .....                   | Xuzhou Yujinfang Wood Co., Ltd .....                                     | 59.46          |

| Exporter   | Producer   | Percent margin |
|--|--|----------------|
| Shanghai Luli Trading Co., Ltd .....                     | Shandong Huaxin Jiasheng Wood Co., Ltd .....                   | 59.46          |
| Shanghai Luli Trading Co., Ltd .....                     | Feixian Nanzhangzhuang Town Qingqi Wood Product Co., Ltd ..... | 59.46          |
| Shanghai Luli Trading Co., Ltd .....                     | Juxian Dechang Wood Co., Ltd .....                             | 59.46          |
| Shanghai Mailin International Trade Co., Ltd .....       | Xuzhou Camry Wood Co., Ltd .....                               | 59.46          |
| Shanghai Mailin International Trade Co., Ltd .....       | Fengxian Shuangxingyuan Wood Co., Ltd .....                    | 59.46          |
| Shanghai Mailin International Trade Co., Ltd .....       | Juxian Dechang Wood Co., Ltd .....                             | 59.46          |
| Shanghai Mailin International Trade Co., Ltd .....       | Pizhou Xuexin Wood Co., Ltd .....                              | 59.46          |
| Shanghai Mailin International Trade Co., Ltd .....       | Pizhou Jinguoyuan Wood Co., Ltd .....                          | 59.46          |
| Shanghai S&M Trade Co., Ltd .....                        | Huaiyang Xiangyu Wood Industry Co., Ltd .....                  | 59.46          |
| Shanghai S&M Trade Co., Ltd .....                        | Langfang Baomujie Wood Co., Ltd .....                          | 59.46          |
| Shanghai S&M Trade Co., Ltd .....                        | Jiangsu Shuren Wood Industry Co., Ltd .....                    | 59.46          |
| Shanghai Senda Fancywood Industry Co. ....               | Shanghai Senda Fancywood Industry Co. ....                     | 59.46          |
| Shouguang Sanyang Wood Industry Co., Ltd .....           | Shouguang Sanyang Wood Industry Co., Ltd .....                 | 59.46          |
| Siyang Enika International Trade Co., Ltd .....          | Jiangsu Shuren Wood Industry Co., Ltd .....                    | 59.46          |
| Siyang Enika International Trade Co., Ltd .....          | Suqianshi Qiyi Plywood Co., Ltd .....                          | 59.46          |
| Smart Gift International .....                           | Jiangsu Shuren Wood Industry Co., Ltd .....                    | 59.46          |
| Smart Gift International .....                           | Huaiyang Xiangyu Wood Industry Co., Ltd .....                  | 59.46          |
| Smart Gift International .....                           | Langfang Baomujie Wood Co., Ltd .....                          | 59.46          |
| Sumec International Technology Co., Ltd .....            | Suqian Huilin Wood Industry Co., Ltd .....                     | 59.46          |
| Sumec International Technology Co., Ltd .....            | Yinli Lianyi Wood Industry Co., Ltd .....                      | 59.46          |
| Sumec International Technology Co., Ltd .....            | Linyi Dashun Wood Industry Co., Ltd .....                      | 59.46          |
| Sumec International Technology Co., Ltd .....            | Jiangsu Shuren Wood Industry Co., Ltd .....                    | 59.46          |
| Sumec International Technology Co., Ltd .....            | Linyi Yiming Wood Industry Co., Ltd .....                      | 59.46          |
| Sumec International Technology Co., Ltd .....            | Linyi Xicheng Wood Industry Co., Ltd .....                     | 59.46          |
| Sumec International Technology Co., Ltd .....            | Shandong Junxing Wood Industry Co., Ltd .....                  | 59.46          |
| Sumec International Technology Co., Ltd .....            | Xuzhou Zhongtai Wood Industry Co., Ltd .....                   | 59.46          |
| Sumec International Technology Co., Ltd .....            | Linyi Lanshan District Linyu Panel Factory .....               | 59.46          |
| Sumec International Technology Co., Ltd .....            | Fengxian Jihe Wood Industry Co., Ltd .....                     | 59.46          |
| Suqian Foreign Trade Co., Ltd .....                      | Pizhou Jiangshan Wood Co., Ltd .....                           | 59.46          |
| Suqian Foreign Trade Co., Ltd .....                      | Suqian Bairun Wood Co., Ltd .....                              | 59.46          |
| Suqian Hopeway International Trade Co., Ltd .....        | Xuzhou Henglin Wood Co., Ltd .....                             | 59.46          |
| Suqian Hopeway International Trade Co., Ltd .....        | Qufu Shengda Wood Co., Ltd .....                               | 59.46          |
| Suqian Hopeway International Trade Co., Ltd .....        | Qufu Dongyuan Wood Co., Ltd .....                              | 59.46          |
| Suqian Hopeway International Trade Co., Ltd .....        | Xuzhou Fuyu Wood Co., Ltd .....                                | 59.46          |
| Suqian Hopeway International Trade Co., Ltd .....        | Linyi Dahua Wood Co., Ltd .....                                | 59.46          |
| Suqian Hopeway International Trade Co., Ltd .....        | Xuzhou Longyuan Wood Co., Ltd .....                            | 59.46          |
| Suqian Hopeway International Trade Co., Ltd .....        | Linyi Dazhong Wood Co. Ltd .....                               | 59.46          |
| Suqian Hopeway International Trade Co., Ltd .....        | Linyi Jinhua Wood Co., Ltd .....                               | 59.46          |
| Suqian Hopeway International Trade Co., Ltd .....        | Feixian Jianxin Wood Co., Ltd .....                            | 59.46          |
| Suqian Hopeway International Trade Co., Ltd .....        | Linyi Qianfeng Wood Co., Ltd .....                             | 59.46          |
| Suqian Hopeway International Trade Co., Ltd .....        | Pizhou Jiangshan Wood Co., Ltd .....                           | 59.46          |
| Suqian Hopeway International Trade Co., Ltd .....        | Jiangsu Vermont Wood Products Co., Ltd .....                   | 59.46          |
| Suqian Hopeway International Trade Co., Ltd .....        | Xuzhou Hongwei Wood Co., Ltd .....                             | 59.46          |
| Suqian Hopeway International Trade Co., Ltd .....        | Linyi Dashun Wood Co., Ltd .....                               | 59.46          |
| Suqian Hopeway International Trade Co., Ltd .....        | Linyi City Dongfang Jinxin Economic And Trade Co., Ltd .....   | 59.46          |
| Suqian Hopeway International Trade Co., Ltd .....        | Guangxi Guigang Haixiong Wood, Co., Ltd .....                  | 59.46          |
| Suzhou Dongda Wood Co., Ltd .....                        | Suzhou Dongda Wood Co., Ltd .....                              | 59.46          |
| Suzhou Fengshuwan Import And Export Trade Co., Ltd ..... | Xuzhou Henglin Wood Co., Ltd .....                             | 59.46          |
| Suzhou Fengshuwan Import And Export Trade Co., Ltd ..... | Qufu Shengda Wood Co., Ltd .....                               | 59.46          |
| Suzhou Fengshuwan Import And Export Trade Co., Ltd ..... | Qufu Dongyuan Wood Co., Ltd .....                              | 59.46          |
| Suzhou Fengshuwan Import And Export Trade Co., Ltd ..... | Xuzhou Fuyu Wood Co., Ltd .....                                | 59.46          |
| Suzhou Fengshuwan Import And Export Trade Co., Ltd ..... | Linyi Dahua Wood Co., Ltd .....                                | 59.46          |
| Suzhou Oriental Dragon Import And Export Corp Ltd .....  | Linyi City Qunxiang Wood Corp .....                            | 59.46          |
| Suzhou Oriental Dragon Import And Export Corp Ltd .....  | Linyi Huachengyongbin Wood Corp .....                          | 59.46          |
| Suzhou Oriental Dragon Import And Export Corp Ltd .....  | Linyi City Tiancai Wood Corp .....                             | 59.46          |
| Suzhou Oriental Dragon Import And Export Corp Ltd .....  | Shandong Jinjiu Wood Corp .....                                | 59.46          |
| Suzhou Oriental Dragon Import And Export Corp Ltd .....  | Linyi City Jinghua Wood Corp .....                             | 59.46          |
| Suzhou Oriental Dragon Import And Export Corp Ltd .....  | Linyi City Yongsun Wood Corp .....                             | 59.46          |
| Suzhou Oriental Dragon Import And Export Corp Ltd .....  | Linyi Tianhe Wood Factory .....                                | 59.46          |
| Suzhou Oriental Dragon Import And Export Corp Ltd .....  | Juxian Dechang Wood Factory .....                              | 59.46          |
| Suzhou Oriental Dragon Import And Export Corp Ltd .....  | Linyi Sanli Wood Factory .....                                 | 59.46          |
| Suzhou Oriental Dragon Import And Export Corp Ltd .....  | Xuzhou Dayuan Wood Factory .....                               | 59.46          |
| Suzhou Oriental Dragon Import And Export Corp Ltd .....  | Feng County Zhongtuo Wood Factory .....                        | 59.46          |
| Suzhou Oriental Dragon Import And Export Corp Ltd .....  | Feng County Shuangxingyuan Wood Factory .....                  | 59.46          |
| Suzhou Oriental Dragon Import And Export Corp Ltd .....  | Linyi Jinhao Wood Factory .....                                | 59.46          |
| Suzhou Oriental Dragon Import And Export Corp Ltd .....  | Suzhou Hengzheng Wood Co., Ltd .....                           | 59.46          |
| Suzhou Oriental Dragon Import And Export Corp Ltd .....  | Jiangsu Vermont Wood .....                                     | 59.46          |
| Suzhou Oriental Dragon Import And Export Corp Ltd .....  | Linyi Dahua Wood Co., Ltd .....                                | 59.46          |
| Suzhou Oriental Dragon Import And Export Corp Ltd .....  | Yinhe Machinery Chemical Limited Company Of Shandong Province. | 59.46          |
| Suzhou Oriental Dragon Import And Export Corp Ltd .....  | Suqian Bairun Wood Industry Co., Ltd .....                     | 59.46          |
| Suzhou Oriental Dragon Import And Export Corp Ltd .....  | Shandong Anxin Timber Co., Ltd .....                           | 59.46          |
| Wenzhou Eita Import & Export Co., Ltd .....              | Linyi Ruichen Economic And Trade Co., Ltd .....                | 59.46          |

| Exporter   | Producer   | Percent margin |
|--|--|----------------|
| Wenzhou Eita Import & Export Co., Ltd .....                    | Hongye Wood Products Co., Ltd .....                            | 59.46          |
| Wenzhou Eita Import & Export Co., Ltd .....                    | Sahngdaong Lianbang Wooden Co., Ltd .....                      | 59.46          |
| Wenzhou Eita Import & Export Co., Ltd .....                    | Fei County Guangyuan Wood Product .....                        | 59.46          |
| Wenzhou Eita Import & Export Co., Ltd .....                    | Pingyi County Jufeng Wood Products Co., Ltd .....              | 59.46          |
| Wenzhou Eita Import & Export Co., Ltd .....                    | Xuzhou Zhongda Cai Wood Products Co., Ltd .....                | 59.46          |
| Wenzhou Eita Import & Export Co., Ltd .....                    | Linyi Hengda Wood Products Co., Ltd .....                      | 59.46          |
| Wenzhou Eita Import & Export Co., Ltd .....                    | Xuzhou Changchen Wood Products Co., Ltd .....                  | 59.46          |
| Wenzhou Eita Import & Export Co., Ltd .....                    | Zhucheng Hailong Industry And Trade Co., Ltd .....             | 59.46          |
| Xuzhou Antop International Trade Co., Ltd .....                | Xuzhou Anlian Wood Co., Ltd (Anlian) .....                     | 59.46          |
| Xuzhou Baoqi Wood Product Co., Ltd .....                       | Linyi Qianjin Wood Co., Ltd .....                              | 59.46          |
| Xuzhou Baoqi Wood Product Co., Ltd .....                       | Linyi Huifeng Wood Industry Co., Ltd .....                     | 59.46          |
| Xuzhou Baoqi Wood Product Co., Ltd .....                       | Xingying Wood Co., Ltd .....                                   | 59.46          |
| Xuzhou Baoqi Wood Product Co., Ltd .....                       | Linyi Lanshan District Rongxin Wood Packaging Plant .....      | 59.46          |
| Xuzhou Chengxin Wood Co., Ltd .....                            | Xuzhou Chengxin Wood Co., Ltd .....                            | 59.46          |
| Xuzhou Ekea International Trade Co., Ltd .....                 | Cangshan Hongrui Wood Co., Ltd .....                           | 59.46          |
| Xuzhou Ekea International Trade Co., Ltd .....                 | Linyi Tianwei Wood & Decorative Panel Factory Co., Ltd .....   | 59.46          |
| Xuzhou Ekea International Trade Co., Ltd .....                 | Fengxian Jihe Wood Co., Ltd .....                              | 59.46          |
| Xuzhou Ekea International Trade Co., Ltd .....                 | Suzhou Shunfa Wood Co., Ltd .....                              | 59.46          |
| Xuzhou Hansun Import & Export Co., Ltd .....                   | Xuzhou Zhongyuan Wood Co., Ltd (Zhongyuan) .....               | 59.46          |
| Xuzhou Hongda Wood Co., Ltd .....                              | Xuzhou Hongda Wood Co., Ltd .....                              | 59.46          |
| Xuzhou Pengyu Wood Products Co., Ltd .....                     | Xuzhou Pengyu Wood Products Co., Ltd .....                     | 59.46          |
| Xuzhou Pinlin International Trade Co., Ltd .....               | Anhui Xinyuanda Wood Co., Ltd .....                            | 59.46          |
| Xuzhou Pinlin International Trade Co., Ltd .....               | Feixian Xinyu Wood Co., Ltd .....                              | 59.46          |
| Xuzhou Pinlin International Trade Co., Ltd .....               | Fengxian Fangyuan Wood Co., Ltd .....                          | 59.46          |
| Xuzhou Pinlin International Trade Co., Ltd .....               | Linyi Changcheng Wood Co., Ltd .....                           | 59.46          |
| Xuzhou Pinlin International Trade Co., Ltd .....               | Linyi Huifeng Wood Industry Co., Ltd .....                     | 59.46          |
| Xuzhou Pinlin International Trade Co., Ltd .....               | Linyi Qunshan Wood Co., Ltd .....                              | 59.46          |
| Xuzhou Pinlin International Trade Co., Ltd .....               | Linyi Xinrui Wood Co., Ltd .....                               | 59.46          |
| Xuzhou Pinlin International Trade Co., Ltd .....               | Pizhou Jiangshan Wood Co., Ltd .....                           | 59.46          |
| Xuzhou Pinlin International Trade Co., Ltd .....               | Pizhou Jinguoyuan Wood Co., Ltd .....                          | 59.46          |
| Xuzhou Pinlin International Trade Co., Ltd .....               | Pizhou Xuexin Wood Co., Ltd .....                              | 59.46          |
| Xuzhou Pinlin International Trade Co., Ltd .....               | Shandong Hualianjushan Wood Co., Ltd .....                     | 59.46          |
| Xuzhou Pinlin International Trade Co., Ltd .....               | Shandong Union Wood Co., Ltd .....                             | 59.46          |
| Xuzhou Pinlin International Trade Co., Ltd .....               | Xinyi Zhongcai Wood Co., Ltd .....                             | 59.46          |
| Xuzhou Pinlin International Trade Co., Ltd .....               | Xuzhou Anlian Wood Co., Ltd .....                              | 59.46          |
| Xuzhou Pinlin International Trade Co., Ltd .....               | Xuzhou Changcheng Wood Co., Ltd .....                          | 59.46          |
| Xuzhou Pinlin International Trade Co., Ltd .....               | Xuzhou Fuyu Wood Co., Ltd .....                                | 59.46          |
| Xuzhou Pinlin International Trade Co., Ltd .....               | Xuzhou Hongmei Wood Development Co., Ltd .....                 | 59.46          |
| Xuzhou Pinlin International Trade Co., Ltd .....               | Xuzhou Longyuan Wood Co., Ltd .....                            | 59.46          |
| Xuzhou Pinlin International Trade Co., Ltd .....               | Xuzhou Yuanhao Wood Industry Co., Ltd .....                    | 59.46          |
| Xuzhou Pinlin International Trade Co., Ltd .....               | Yanzhou Huashiluyuan Wood Development Co., Ltd .....           | 59.46          |
| Xuzhou Runjin Import & Export Trade Co., Ltd .....             | Xuzhou Camry Wood Co., Ltd (Camry) .....                       | 59.46          |
| Xuzhou Runjin Import & Export Trade Co., Ltd .....             | Lianyungang Wonderful Wood Co., Ltd (Wonderful Wood) .....     | 59.46          |
| Xuzhou Sanli Wood Co., Ltd .....                               | Xuzhou Sanli Wood Co., Ltd .....                               | 59.46          |
| Xuzhou Shenghe Wood Co., Ltd .....                             | Xuzhou Shenghe Wood Co., Ltd .....                             | 59.46          |
| Xuzhou Shengping Import & Export Co., Ltd .....                | Fengxian Jihe Wood Industry Co. Ltd .....                      | 59.46          |
| Xuzhou Shengping Import & Export Co., Ltd .....                | Fengxian Weiheng Wood Co., Ltd .....                           | 59.46          |
| Xuzhou Shengping Import & Export Co., Ltd .....                | Xuzhou Longyuan Wood Co., Ltd .....                            | 59.46          |
| Xuzhou Sincere Wood Co., Ltd .....                             | Xuzhou Sincere Wood Co., Ltd .....                             | 59.46          |
| Xuzhou Tianshan Wood Co., Ltd .....                            | Xuzhou Tianshan Wood Co., Ltd .....                            | 59.46          |
| Xuzhou Timber International Trade Co., Ltd .....               | Xuzhou Jiangheng Wood Products Co., Ltd .....                  | 59.46          |
| Xuzhou Timber International Trade Co., Ltd .....               | Xuzhou Jiangyang Wood Industries Co., Ltd .....                | 59.46          |
| Xuzhou Timber International Trade Co., Ltd .....               | Xuzhou Changcheng Wood Co., Ltd .....                          | 59.46          |
| Xuzhou Timber International Trade Co., Ltd .....               | Hebei Tongli Wood Co., Ltd .....                               | 59.46          |
| Xuzhou Timber International Trade Co., Ltd .....               | Linyi Mingzhu Wood Co., Ltd .....                              | 59.46          |
| Xuzhou Timber International Trade Co., Ltd .....               | Qufu City Shengda Wooden Industry Co., Ltd .....               | 59.46          |
| Xuzhou Timber International Trade Co., Ltd .....               | Cangshan Hongrui Wood Co., Ltd .....                           | 59.46          |
| Xuzhou Timber International Trade Co., Ltd .....               | Linyi Hualing Plywood Factory .....                            | 59.46          |
| Xuzhou Timber International Trade Co., Ltd .....               | Linyi Qianjin Wood Co., Ltd .....                              | 59.46          |
| Xuzhou Timber International Trade Co., Ltd .....               | Linyi Xinrui Wood Co., Ltd .....                               | 59.46          |
| Xuzhou Timber International Trade Co., Ltd .....               | Linyi Huifeng Wood Co., Ltd .....                              | 59.46          |
| Xuzhou Timber International Trade Co., Ltd .....               | Linyi Dazhong Wood Co., Ltd .....                              | 59.46          |
| Xuzhou Timber International Trade Co., Ltd .....               | Pizhou Xuexin Wood Co., Ltd .....                              | 59.46          |
| Xuzhou Weilin Wood Co., Ltd .....                              | Xuzhou Weilin Wood Co., Ltd .....                              | 59.46          |
| Xuzhou Zhongda Building Materials Co., Ltd .....               | Linyi Jianshun Wood Co., Ltd (Jianshun) .....                  | 59.46          |
| Xuzhou Zhongda Building Materials Co., Ltd .....               | Xuzhou Runcheng Wood Co., Ltd (Runcheng) .....                 | 59.46          |
| Yijiang Wood Products (Kunshan) Co., Ltd .....                 | Yijiang Wood Products (Kunshan) Co., Ltd .....                 | 59.46          |
| Yinhe Machinery Chemical Limited Company Of Shandong Province. | Yinhe Machinery Chemical Limited Company Of Shandong Province. | 59.46          |
| Yishui Hongtai Wood-Made Co., Ltd .....                        | Yishui Hongtai Wood-Made Co., Ltd .....                        | 59.46          |
| Yutai Zezhong Wood Co., Ltd .....                              | Yutai Zezhong Wood Co., Ltd .....                              | 59.46          |
| Zhejiang Anji Tiancheng Flooring Co., Ltd .....                | Zhejiang Anji Tiancheng Flooring Co., Ltd .....                | 59.46          |
| Zhejiang Dehua Tb Import & Export Co., Ltd .....               | Zhejiang Jufeng Wood Co., Ltd .....                            | 59.46          |

| Exporter   | Producer  | Percent margin |
|--|---|----------------|
| Zhejiang Dehua Tb Import & Export Co., Ltd .....         | Dehua Tb New Decoration Material Co., Ltd .....   | 59.46          |
| Zhejiang Dehua Tb Import & Export Co., Ltd .....         | Zhangjiagang Jiuli Wood Co., Ltd .....            | 59.46          |
| Zhejiang Shenghua Yunfeng Import & Export Co., Ltd ..... | Zhejiang Deqing Shengqiang Wood Co., Ltd .....    | 59.46          |
| Zhejiang Xinyuan Bamboo Products Co., Ltd .....          | Zhejiang Xinyuan Bamboo Products Co., Ltd .....   | 59.46          |
| Zhejiang Yongyu Bamboo Joint-Stock Co., Ltd .....        | Zhejiang Yongyu Bamboo Joint-Stock Co., Ltd ..... | 59.46          |
| PRC-Wide Entity <sup>20</sup> .....                      | .....   | 121.65         |

## Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose the calculations performed in this investigation to parties within five days of the date of publication of this notice in the **Federal Register**.

## Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all appropriate entries of plywood from the PRC as described in the "Scope of the Investigation" section, which were entered, or withdrawn from warehouse, for consumption on or after May 3, 2013, the date of publication of the *Preliminary Determination* in the **Federal Register**. Further, the Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which the normal value exceeds U.S. price as follows: (1) For the exporter/producer combinations listed in the table above, the cash deposit rate will be equal to the weighted-average dumping margin which the Department has determined in this final determination; (2) for all combinations of PRC exporters/producers of merchandise under consideration which have not received their own separate rate above, the cash deposit rate will be equal to the weighted-average dumping margin established for the PRC-wide entity; and (3) for all non-PRC exporters of merchandise under consideration which have not received their own separate rate above, the cash deposit rate will be equal to the cash deposit rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter.

These suspension of liquidation instructions will remain in effect until further notice.

## International Trade Commission Notification

In accordance with section 735(d) of the Act, the Department has notified the International Trade Commission ("ITC") of the final affirmative determination of sales at LTFV. In accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise under consideration. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

## Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: September 16, 2013.

**Paul Piquado,**  
Assistant Secretary for Import Administration.

## Appendix

### Issues for the Final Determination

#### General Issues

Comment 1: Calculation of the Separate Rate  
Comment 2: Respondent Selection

Comment 3: Selection of the PRC-Wide Margin

Comment 4: Initiation of the Investigation was Unlawful

Comment 5: Comparison Methodology-Differential Pricing v. Targeted Dumping

Comment 6: Scope Related Issues

Comment 6.A: Solid Bamboo Products

Comment 6.B: Bamboo Flooring

Comment 6.C: Structural Plywood

Comment 6.D: "Very Thin" Plywood

Comment 6.E: Plywood With a Surface Other Than Wood

Comment 6.F: Other Scope Issues

#### Surrogate Country and Values Issues

Comment 7: Selection of the Surrogate Country

Comment 8: Selection of Financial Statements

Comment 9: Surrogate Value for Water

Comment 10: Surrogate Values for Wood Veneers

Comment 11: Surrogate Value for Bone Glue

Comment 12: Surrogate Value for Brokerage and Handling

Comment 13: Surrogate Value for Inland Freight

#### Mandatory Respondent Specific Issues

Jiangyang Group

Comment 14: Jiangyang Group's Unreported Sales

Comment 15: Jiangyang Group's Warehousing Expenses

Comment 16: Correction of the Final Customs Instructions for the Jiangyang Group

#### Linyi Sanfortune

Comment 16: Sanfortune's Packing Buckles

Comment 17: Sanfortune's Freight Distances

Comment 18: Correction of Sanfortune's Company Name for the Final Determination

#### Other Issues

Comment 19: Translation of Pizhou Henxing's Supplier's Name

Comment 20: Removal of Double Bracketed Information From the Record

Comment 21: Whether To Grant Certain Companies Separate Rates

[FR Doc. 2013-23088 Filed 9-20-13; 8:45 am]

**BILLING CODE 3510-DS-P**

<sup>19</sup> The Jiangyang Group consists of Xuzhou Jiangyang Wood Industries Co., Ltd and Xuzhou Jiangheng Wood Products Co., Ltd.

<sup>20</sup> This rate also applies to the companies listed in Attachment II of the Issues and Decision Memorandum.

**DEPARTMENT OF COMMERCE****International Trade Administration**

[C-570-987]

**Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2011**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and/or exporters of hardwood and decorative plywood from the People's Republic of China (PRC).

**DATES:** *Effective Date:* September 23, 2013.

**FOR FURTHER INFORMATION CONTACT:** David Lindgren or Toni Page, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-3870 or (202) 482-1398, respectively.

**Background**

The petitioners in this investigation are the Coalition for Fair Trade of Hardwood Plywood (Petitioners). In addition to the Government of the PRC, the respondents in this investigation are: (1) Linyi City Dongfang Jinxin Economic & Trade Co., Ltd. (Dongfang); (2) Linyi San Fortune Wood Co., Ltd. (San Fortune); and (3) Shanghai Senda Fancywood Inc. a/k/a Shanghai Senda Fancywood Industry Co. (Senda), along with their affiliated companies.

**Period of Investigation**

The period for which we are measuring subsidies, or period of

investigation, is January 1, 2011, through December 31, 2011.

**Case History**

The events that have occurred since the Department published the *Preliminary Determination* on March 14, 2013,<sup>1</sup> are discussed in the Memorandum to Paul Piquado, Assistant Secretary for Import Administration, "Issues and Decision Memorandum for the Final Affirmative Determination in the Countervailing Duty Investigation of Hardwood and Decorative Plywood From the People's Republic of China" (Decision Memorandum), which is dated concurrently with and hereby adopted by this notice.

**Scope Comments**

In the *Preliminary Determination* for the companion antidumping duty investigation, the Department invited interested parties to file briefs on scope related matters.<sup>2</sup> Between May 20, and June 17, 2013, interested parties filed briefs and rebuttal briefs related to the scope of the investigation. On May 31, 2013, interested parties requested a hearing for scope related issues.<sup>3</sup> The Department held a public hearing for scope issues on June 18, 2013.<sup>4</sup> Based on the comments received from interested parties, we have updated the scope of the investigation for the final determination.<sup>5</sup> In addition, we have addressed all scope comments in the Decision Memorandum.

**Scope of the Investigation**

The merchandise subject to this investigation is hardwood and decorative plywood. Hardwood and decorative plywood is a flat panel composed of an assembly of two or more layers or plies of wood veneers in combination with a core. The veneers, along with the core, are glued or

otherwise bonded together to form a finished product. A hardwood and decorative plywood panel must have face and back veneers which are composed of one or more species of hardwoods, softwoods, or bamboo. Hardwood and decorative plywood may include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP-1-2009. See Appendix I for a complete description of the scope of this investigation.

**Analysis of Subsidy Programs and Comments Received**

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Decision Memorandum. A list of subsidy programs and the issues that parties have raised, and to which we responded in the Decision Memorandum, is attached to this notice as Appendix II.

The Decision Memorandum is a public document and is on file electronically via IA ACCESS. IA ACCESS is available to registered users at <http://iaaccess.trade.gov> and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at <http://www.trade.gov/ia/>. The signed and the electronic versions of this memorandum are identical in content.

**Suspension of Liquidation**

In accordance with section 705(c)(1)(B)(i) of the Tariff Act of 1930 (the Act), we have calculated rates for Dongfang, San Fortune and Senda. We determine the countervailable subsidy rates to be:

| Company  | Subsidy rate (percent) |
|--|------------------------|
| Linyi City Dongfang Jinxin Economic & Trade Co., Ltd .....                     | (**)                   |
| Linyi San Fortune Wood Co., Ltd .....  | (**)                   |
| Shanghai Senda Fancywood Inc. a/k/a Shanghai Senda Fancywood Industry Co ..... | (**)                   |
| Asia Dekor (Heyuan) Woods Co., Ltd * .....                                     | 27.16                  |
| Baishan Huafeng Wooden Product Co * .....                                      | 27.16                  |
| China Friend Limited * .....   | 27.16                  |
| Feixian Guangyuan Plywood Factory * .....                                      | 27.16                  |
| Feixian Xinfeng Wood Co Ltd * .....  | 27.16                  |
| Huzhou Chen Hang Wood Co. Ltd * .....  | 27.16                  |
| Jiafeng Wood (Suzhou) Co., Ltd * .....   | 27.16                  |

<sup>1</sup> See *Hardwood and Decorative Plywood From the People's Republic of China: Amended Preliminary Countervailing Duty Determination; and Alignment of Final Determination With Final Antidumping Determination*, 78 FR 16250 (March 14, 2013) (*Preliminary Determination*), and the accompanying Preliminary Decision Memorandum.

<sup>2</sup> See *Hardwood and Decorative Plywood From the People's Republic of China: Antidumping Duty Investigation*, 78 FR 25946, 25952 (May 3, 2013).

<sup>3</sup> See Letter to Acting Secretary Rebecca Blank Re: Request for Hearing on Scope-Related Issues Hardwood and Decorative Plywood From China (May 31, 2013).

<sup>4</sup> See Scope Issue for the Antidumping Duty and Countervailing Duty Investigations on Hardwood Decorative Plywood From the People's Republic of China: Case Nos. A-570-986 and C-570-987 (Hearing Transcript) (June 26, 2013).

<sup>5</sup> See Appendix I.

| Company  | Subsidy rate<br>(percent) |
|--|---------------------------|
| Linyi Guoxin Wood Co., Ltd* .....              | 27.16                     |
| Linyi Huayuan Wood Co., Ltd* .....             | 27.16                     |
| Linyi Sengong Wood Co., Ltd* .....             | 27.16                     |
| Lizhong Wood Industry Limited Co* .....        | 27.16                     |
| Shandong Lichen Group Co., Ltd* .....          | 27.16                     |
| Wellmade Floor Industries Co. Ltd* .....       | 27.16                     |
| Zhejiang Dadongwu GreenHome Wood Co* .....     | 27.16                     |
| Zhejiang Desheng Wood Industry Co., Ltd* ..... | 27.16                     |
| All Others .....                               | 13.58                     |

\* Non-cooperative company to which an adverse facts available (AFA) rate is being applied. See the Issues and Decision Memorandum.

\*\* *de minimis*.

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from the PRC (with the exception of entries made by Dongfang, San Fortune, and Senda) that were entered, or withdrawn from warehouse, for consumption on or after March 14, 2013, the date of the publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for countervailing duty (CVD) purposes for subject merchandise entered, or withdrawn from warehouse, on or after July 12, 2013, but to continue the suspension of liquidation of all entries from March 14, 2013, through July 11, 2013. Because the subsidy rates for Dongfang, San Fortune, and Senda are *de minimis*, liquidation will not be suspended and no cash deposits will be required for merchandise that are produced and exported by Dongfang, San Fortune, and Senda.

If the International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order and reinstate the suspension of liquidation for the relevant companies under section 706(a) of the Act, and we will require a cash deposit of estimated CVDs for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

In accordance with sections 703(d) and 705(c)(5)(A) of the Act, for companies not individually investigated, we apply an “all-others” rate, which is normally calculated by weight averaging the subsidy rates of the individually investigated companies. Under section 705(c)(5)(i) of the Act, the

“all-others” rate excludes zero and *de minimis* rates and rates based entirely on facts available for the exporters and producers individually investigated. Where the rates for the individually investigated companies are all zero or *de minimis* or based on facts available, section 705(c)(5)(A)(ii) of the Act instructs the Department to establish an “all-others” rate using “any reasonable method.”

For purposes of this final determination, we find that a reasonable method for establishing the “all-others” rate is to calculate a simple average margin based on the rates assigned to the three mandatory respondents (zero percent) and the AFA rate assigned to the non-responsive companies (27.16 percent). We have limited the number of AFA rates used in the average, based on failures to respond to the quantity and value (Q&V) questionnaires, to the same number of companies that we determined we could reasonably examine in this investigation, which was three. Accordingly, we determined the “all-others” rate by taking the simple average of the rates calculated for the three selected mandatory respondents and three AFA rates for companies that failed to respond to the Q&V questionnaire. Thus, we are assigning an “all-others” rate of 13.58 percent.<sup>6</sup>

#### ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination.

#### Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return

<sup>6</sup> See Decision Memorandum at “All-Others Rate”.

or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: September 16, 2013.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

#### Appendix I

##### Scope of the Investigation

The merchandise subject to this investigation is hardwood and decorative plywood. Hardwood and decorative plywood is a flat panel composed of an assembly of two or more layers or plies of wood veneers in combination with a core. The veneers, along with the core, are glued or otherwise bonded together to form a finished product. A hardwood and decorative plywood panel must have face and back veneers which are composed of one or more species of hardwoods, softwoods, or bamboo. Hardwood and decorative plywood may include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP-1–2009.

All hardwood and decorative plywood is included within the scope of this investigation, without regard to dimension (overall thickness, thickness of face veneer, thickness of back veneer, thickness of core, thickness of inner veneers, width, or length). However, the most common panel sizes of hardwood and decorative plywood are 1219 x 1829 mm (48 x 72 inches), 1219 x 2438 mm (48 x 96 inches), and 1219 x 3048 mm (48 x 120 inches).

A “veneer” is a thin slice of wood which is rotary cut, sliced or sawed from a log, bolt or flitch. The face veneer is the exposed veneer of a hardwood and decorative plywood product which is of a superior grade than that of the back veneer, which is the other exposed veneer of the product (*i.e.*, as opposed to the inner veneers). When the two exposed veneers are of equal grade, either one can be considered the face or back veneer. For products that are entirely composed of veneer, such as Veneer Core Platforms, the exposed veneers are to be

considered the face and back veneers, in accordance with the descriptions above.

The core of hardwood and decorative plywood consists of the layer or layers of one or more material(s) that are situated between the face and back veneers. The core may be composed of a range of materials, including but not limited to veneers, particleboard, and medium-density fiberboard ("MDF").

All hardwood and decorative plywood is included within the scope of this investigation regardless of whether or not the face and/or back veneers are surface coated, unless the surface coating obscures the grain, texture or markings of the wood in a permanent manner. Examples of surface coatings which may not obscure the grain, texture or markings of the wood include, but are not limited to, ultra-violet light cured polyurethanes, oil or oil-modified or water based polyurethanes, wax, epoxy-ester finishes, and moisture-cured urethanes. Hardwood and decorative plywood that has face and/or back veneers which have a permanent and opaque surface coating which obscures the grain, texture or markings of the wood, are not included within the scope of this investigation. Examples of permanently affixed surface coatings which may obscure the grain, texture or markings of wood include, but are not limited to, paper, aluminum, high pressure laminate ("HPL"), MDF, medium density overlay ("MDO"), and phenolic film. Additionally, the face veneer of hardwood and decorative plywood may be sanded, smoothed or given a "distressed" appearance through such methods as hand-scraping or wire brushing. The face veneer may be stained.

The scope of the investigation excludes the following items: (1) structural plywood (also known as "industrial plywood" or "industrial panels") that is manufactured and stamped to meet U.S. Products Standard PS 1-09, PS 2-09, or PS 2-10 for Structural Plywood (including any revisions to that standard or any substantially equivalent international standard intended for structural plywood), including but not limited to the "bond performance" requirements set forth at paragraph 5.8.6.4 of that Standard and the performance criteria detailed at Table 4 through 10 of that Standard; (2) products which have a face and back veneer of cork; (3) multilayered wood flooring, as described in the antidumping duty and countervailing duty orders on Multilayered Wood Flooring from the People's Republic of China, Import Administration, International Trade Administration, U.S. Department of Commerce Investigation Nos. A-570-970 and C-570-971 (published December 8, 2011), and additionally, multilayered wood flooring with a face veneer of bamboo or composed entirely of bamboo; (4) plywood which has a shape or design other than a flat panel; (5) products made entirely from bamboo and adhesives (also known as "solid bamboo").

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States ("HTSUS"): 4412.10.0500; 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.5135; 4412.31.5155;

4412.31.5165; 4412.31.5175; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.2510; 4412.32.2520; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.10.9000; 4412.31.4080; 4412.32.0570; 4412.32.2530; 4412.94.5100; 4412.94.9500; 4412.99.5115; and 4412.99.9500.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise as set forth herein is dispositive.

## Appendix II

### Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Subsidy Valuation Information
  - A. Period of Investigation
  - B. Allocation Period
  - C. Attribution of Subsidies
  - D. Denominators
- IV. Use of Facts Otherwise Available and Adverse Inferences
  - A. Application of AFA: Non-Cooperative Companies
  - B. Application of AFA: Provision of Electricity for Less Than Adequate Remuneration
- V. Analysis of Programs
  - A. Programs Determined To Be Countervailable
    1. Provision of Electricity for LTAR
  - B. Programs Determined Not To Be Used or Not to Confer a Benefit During the POI
    1. Tax Exemptions and Reductions for "Productive" Foreign Invested Enterprises (FIEs)
    2. Provincial Tax Exemptions and Reductions for "Productive" FIEs
    3. Tax Reduction for FIEs in Designated Geographic Locations
    4. Value Added Tax and Tariff Exemptions on Imported Equipment
- VI. Analysis of Comments
 

Comment 1: Application of Adverse Facts Available

Comment 2: "All-Others" Rate

Comment 3: Provision of Electricity

Comment 4: Initiation of the Investigation was Unlawful

Comment 5A: Solid Bamboo Products

Comment 5B: Bamboo Flooring

Comment 5C: Structural Plywood

Comment 5D: Very Thin Plywood

Comment 5E: Other Scope Issues

Comment 5F: Plywood with a Surface Other Than Wood

## VII. Recommendation

[FR Doc. 2013-23077 Filed 9-20-13; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[Application No. 99-6A002]

### Export Trade Certificate of Review

**ACTION:** Notice of issuance of an amended Export Trade Certificate of Review to California Almond Export Association, LLC ("CAEA") (Application #99-6A002).

**SUMMARY:** The U.S. Department of Commerce issued an amended Export Trade Certificate of Review to California Almond Export Association, LLC on August 29, 2013.

**FOR FURTHER INFORMATION CONTACT:** Joseph E. Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, by telephone at (202) 482-5131 (this is not a toll-free number) or email at *etca@trade.gov*.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001-21) ("the Act") authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (2013).

The Office of Competition and Economic Analysis ("OCEA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

### Description of Amended Certificate

*CAEA's Export Trade Certificate of Review has been amended to:*

1. Delete the following company as a Member of CAEA's Certificate: North Valley Nut, Inc. (Orland, CA).
2. Change the name of the following Member: Roche Brothers International (Escalon, CA) to Roche Brothers International Family Nut Co. (Escalon, CA)

*CAEA's Export Trade Certificate of Review complete amended membership is listed below:*  
Almonds California Pride, Inc.,  
Caruthers, CA

Baldwin-Minkler Farms, Orland, CA  
 Blue Diamond Growers, Sacramento, CA  
 Campos Brothers, Caruthers, CA  
 Chico Nut Company, Chico, CA  
 Del Rio Nut Company, Inc., Livingston, CA  
 Fair Trade Corner, Inc., Chico, CA  
 Fisher Nut Company, Modesto, CA  
 Hilltop Ranch, Inc., Ballico, CA  
 Hughson Nut, Inc., Hughson, CA  
 Mariani Nut Company, Winters, CA  
 Minturn Nut Company, Inc., LeGrand, CA  
 Nutco, LLC d.b.a. Spycher Brothers, Turlock, CA  
 Paramount Farms, Inc., Los Angeles, CA  
 P-R Farms, Inc., Clovis, CA  
 Roche Brothers International Family Nut Co., Escalon, CA  
 South Valley Almond Company, LLC, Wasco, CA  
 Sunny Gem, LLC, Wasco, CA  
 Treehouse California Almonds, LLC, Los Angeles, CA  
 Western Nut Company, Chico, CA

Dated: September 11, 2013.

**Joseph E. Flynn,**

*Director, Office of Competition and Economic Analysis.*

[FR Doc. 2013-22957 Filed 9-20-13; 8:45 am]

**BILLING CODE 3510-DR-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[Application No. 89-4A018]

#### Export Trade Certificate of Review

**ACTION:** Notice of issuance to amend the Export Trade Certificate of Review issued to Outdoor Power Equipment Institute, Inc., Application no. 89-4A018.

**SUMMARY:** The U.S. Department of Commerce issued an amended Export Trade Certificate of Review to Outdoor Power Equipment Institute, Inc. on August 29, 2013.

#### FOR FURTHER INFORMATION CONTACT:

Joseph Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482-5131 (this is not a toll-free number) or email at [etca@trade.gov](mailto:etca@trade.gov).

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) ("the Act") authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (2013).

The Office of Competition and Economic Analysis ("OCEA") is issuing this notice pursuant to 15 CFR 325.6(b),

which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

#### Description of Amended Certificate

*OPEI's Export Trade Certificate of Review has been amended to:*

1. Add the following companies as new Members of OPEI's Certificate: Magic Circle Corporation d/b/a Dixie Chopper (Coatesville, IN) and Briggs & Stratton Corporation (Wauwatosa, WI).
2. Amend the definition of Products under OPEI's existing Certificate to clarify that Products covered include: Sand Trap Rakes (NAICS 333111), Aerators (NAICS 333112), Brushcutters (NAICS 333112), Hedge Trimmers (NAICS 333112), Hand-Held Snow Throwers (NAICS 333112), Split-Boom Products (NAICS 333112), Hand-Held Tillers and Cultivators (NAICS 333112).
3. Amend the definition of Products covered by OPEI's existing Certificate by replacing the current descriptive term "riding rotary turf mowers" (SIC 3524) with "riding mowers" to reflect coverage of Commercial Riding Mowers (NAICS 333111), and Residential Riding Mowers (NAICS 333112).

OPEI's amended Export Trade Certificate of Review membership includes:

Ariens Company, Brillion, WI  
 Briggs & Stratton Corporation (Wauwatosa, WI).  
 Deere & Company dba Worldwide Lawn & Grounds Care Division, Moline, IL  
 Dixon Industries, Inc., Coffeyville, KS  
 Excel Industries, Inc., Hesston, KS  
 Garden Way, Inc., Rensselaer, NY  
 Hoffco, Inc., Richmond, IN  
 Honda Power Equipment Manufacturing, Inc., Swepsonville, NC  
 Howard Price Turf Equipment, Chesterfield, MO  
 Ingersoll Equipment Company, Inc., Winnecone, WI  
 Kut-Kwick Corporation, Brunswick, GA  
 Magic Circle Corporation d/b/a Dixie Chopper (Coatesville, IN)  
 Maxim Manufacturing Corporation, Sebastopol, MS  
 MTD Products, Inc., Valley City, OH  
 Ransomes, Inc., Johnson Creek, WI  
 Scag Power Equipment, Inc., Mayville, WI  
 Simplicity Manufacturing, Inc., Port Washington, WI  
 Solo Incorporated, Newport News, Virginia

Southland Mower Company, Selma, AL  
 Textron, Inc. dba Bunton, a division of Jacobsen, a division of Textron, Inc., Louisville, KY  
 Toro Company (The), Minneapolis, MN  
 Yazoo Manufacturing Company, Inc., Jackson, MS

Dated: September 11, 2013.

**Joseph E. Flynn,**

*Director, Office of Competition and Economic Analysis.*

[FR Doc. 2013-22962 Filed 9-20-13; 8:45 am]

**BILLING CODE 3510-DR-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Western Region Vessel Monitoring System and Pre-Trip Reporting Requirements

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before November 22, 2013.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at [Jjessup@doc.gov](mailto:Jjessup@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Craig Heberer, (760) 805-5984 or [Craig.Heberer@noaa.gov](mailto:Craig.Heberer@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

This request is for extension of a current information collection.

Owners of vessels that fish out of West Coast ports for highly migratory species such as tuna, billfish, and sharks are required to submit information about their intended and actual fishing activities. These submissions would allow the National Marine Fisheries Service (NMFS) and the Pacific Fishery

Management Council to monitor the fisheries and determine the effects and effectiveness of the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS). Pre-trip reporting requirements are essential for effectively and efficiently assigning available observer coverage to selected HMS vessels. Data collected by observers are critical to evaluating if the objectives of the FMP are being achieved and for evaluating the impacts of potential changes in management to respond to new information or new problems in the fisheries. Vessel Monitoring System (VMS) units will facilitate enforcement of closures associated with HMS fisheries and provide timely information on associated fleet activities.

## II. Method of Collection

VMS activation information is submitted electronically and pre-trip notifications are made by telephone.

## III. Data

*OMB Control Number:* 0648-0498.

*Form Number(s):* None.

*Type of Review:* Regular submission (extension of a current information collection).

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 80.

*Estimated Time per Response:* Vessel monitoring system (VMS) activation reports, 15 minutes; pre-trip reports, 5 minutes.

*Estimated Burden Hours:* 60.

*Estimated Total Annual Cost to Public:* \$480 (VMS units and reporting are paid for by NMFS).

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 18, 2013.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013-23018 Filed 9-20-13; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Social Values of Ecosystem Services (SolVES) in Marine Protected Areas for Management Decision-Making

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before November 22, 2013.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at [Jjessup@doc.gov](mailto:Jjessup@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Susan Lovelace, (843) 762-8933 or [susan.lovelace@noaa.gov](mailto:susan.lovelace@noaa.gov).

#### SUPPLEMENTARY INFORMATION

##### I. Abstract

This request is for a new information collection to benefit National Estuarine Research Reserve (NERR) and National Marine Sanctuary (NMS) managers in the Mission-Aransas NERR and the Olympic Coast NMS.

The Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 *et seq.*, authorizes the Secretary of Commerce to (1) preserve, protect, develop, and where possible, to restore or enhance, the resource of the Nation's coastal zone for this and succeeding generations, and (2) encourage coordination and cooperation with and among the appropriate Federal, State, and local agencies, and international

organizations where appropriate, in collection, analysis, synthesis, and dissemination of coastal management information, research results, and technical assistance, to support State and Federal regulation of land use practices affecting the coastal and ocean resources of the United States.

Additionally, the National Marine Sanctuary Act (NMSA), 16 U.S.C. 1431 *et seq.*, authorizes the Secretary of Commerce to (1) maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, population and ecological processes; (2) enhance public awareness, understanding, and appreciation, and wise and sustainable use of the of the marine environment; and the natural, historical, cultural, and archeological resources of the National Marine Sanctuary System; and (3) to support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas.

The National Ocean Service (NOS) proposes to collect socio-economic data from residents of local counties and stakeholder groups using the Mission-Aransas NERR and the Olympic Coast NMS for recreational, cultural and other reasons. Up-to-date socio-economic data is needed to support the individual NERR and NMS site's conservation and management goals, to strengthen and improve resource management decision-making, to increase capacity, and to extend education and outreach efforts.

## II. Method of Collection

Respondents have a choice of completing either electronic (online) or paper forms and those respondents intercepted at the sites may provide oral question responses to the surveyor. Methods of submittal include online completion of electronic survey forms, and mail and facsimile transmission of paper forms.

## III. Data

*OMB Control Number:* None.

*Form Number:* None.

*Type of Review:* Regular submission (request for a new information collection).

*Affected Public:* Individuals or households; state, local, or tribal government.

*Estimated Number of Respondents:* 1,415.

*Estimated Time per Response:* Survey completion, 20 minutes.

*Estimated Total Annual Burden Hours:* 472.

*Estimated Total Annual Cost to Public:* \$0 in recordkeeping/reporting costs.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 17, 2013.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2013-22998 Filed 9-20-13; 8:45 am]

**BILLING CODE 3510-JE-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Consistency Certification for a Proposed Project in Sterling, New York; Notice of Appeal

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice of Appeal

**SUMMARY:** This announcement provides notice that the Department of Commerce (Department) has received a "Notice of Appeal" filed by Mark Smolinski (Appellant) requesting that the Secretary override an objection by the New York Department of State to a consistency certification for a proposed project in Sterling, New York.

*Addresses and Dates:* You may submit written comments concerning this appeal or requests for a public hearing to NOAA, Office of General Counsel, Oceans and Coasts Section, Attn: Gladys Miles, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, or via email to [gc.os.comments@noaa.gov](mailto:gc.os.comments@noaa.gov). Comments or requests for a public hearing must be sent in writing

postmarked or emailed no later than October 23, 2013.

#### SUPPLEMENTARY INFORMATION:

##### I. Notice of Appeal

On August 22, 2013, the Secretary of Commerce (Secretary) received a "Notice of Appeal" filed by Mark Smolinski, pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.*, and implementing regulations found at 15 CFR part 930, subpart H. The appeal is taken from an objection by the New York Department of State to a consistency certification for a U.S. Army Corps of Engineer permit needed for the installation of a solar panel array onto an existing dock located in Sterling, New York. The solar array would provide energy to a private residence.

Under the CZMA, the Secretary may override the Department of State's objection on grounds that the project is consistent with the objectives or purposes of the CZMA or otherwise necessary in the interest of national security. To make the determination that the proposed activity is "consistent with the objectives or purposes of the CZMA," the Department must find that: (1) The proposed activity furthers the national interest as articulated in sections 302 or 303 of the CZMA, in a significant or substantial manner; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of the applicable coastal management program. 15 CFR 930.121. To make the determination that the proposed activity is "necessary in the interest of national security," the Secretary must find that a national defense or other national security interest would be significantly impaired if the activity is not permitted to go forward as proposed. 15 CFR 930.122.

##### II. Request for Public and Federal Agency Comments

We encourage the public and interested federal agencies to participate in this appeal by submitting written comments and any relevant materials supporting those comments. All comments received are a part of the public record. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible.

##### III. Public Hearing Request

You may submit a request for a public hearing using one of the methods specified in the *Addresses and Dates* section of this notice. In your request, explain why you believe a public hearing would be beneficial. If we determine that a public hearing would aid the decisionmaker, a notice announcing the date, time, and location of the public hearing will be published in the **Federal Register**. The public and federal agency comment period will also be reopened for a ten-day period following the conclusion of the public hearing to allow for additional input.

##### IV. Public Availability of Appeal Documents

NOAA intends to provide access to publicly available materials and related documents comprising the appeal record on the following Web site: <http://coastalmanagement.noaa.gov/consistency/fcappeldecisions.html>; and during business hours, at the NOAA, Office of General Counsel in the location specified in the *Addresses and Dates* section of this notice.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

Dated: September 18, 2013.

**Jeffrey S. Dillen,**

*Acting Chief, Oceans & Coasts Section, NOAA Office of General Counsel.*

[FR Doc. 2013-23091 Filed 9-20-13; 8:45 am]

**BILLING CODE 3510-22-P**

## COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION

[OJP (OJJDP) Docket No. 1634]

### Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

**AGENCY:** Coordinating Council on Juvenile Justice and Delinquency Prevention.

**ACTION:** Notice of meeting.

**SUMMARY:** The Coordinating Council on Juvenile Justice and Delinquency Prevention (Council) announces its next meeting.

**DATES:** Monday, October 7, 2013, from 10:00 a.m. to 12:00 p.m.

**ADDRESSES:** The meeting will take place in the third floor main conference room at the U.S. Department of Justice, Office of Justice Programs, 810 7th St. NW., Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** Visit the Web site for the Coordinating

Council at [www.juvenilecouncil.gov](http://www.juvenilecouncil.gov) or contact Kathi Grasso, Designated Federal Official, by telephone at 202–616–7567 [Note: this is not a toll-free telephone number], or by email at [Kathi.Grasso@usdoj.gov](mailto:Kathi.Grasso@usdoj.gov). The meeting is open to the public.

**SUPPLEMENTARY INFORMATION:** The Coordinating Council on Juvenile Justice and Delinquency Prevention, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2) will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601, et seq. Documents such as meeting announcements, agendas, minutes, and reports will be available on the Council's Web page, [www.juvenilecouncil.gov](http://www.juvenilecouncil.gov), where you may also obtain information on the meeting.

Although designated agency representatives may attend, the Council membership is composed of the Attorney General (Chair), the Administrator of the Office of Juvenile Justice and Delinquency Prevention (Vice Chair), the Secretary of Health and Human Services (HHS), the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Director of the Office of National Drug Control Policy, the Chief Executive Officer of the Corporation for National and Community Service, and the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement. The nine additional members are appointed by the Speaker of the House of Representatives, the Senate Majority Leader, and the President of the United States. Other federal agencies take part in Council activities including the Departments of Agriculture, Defense, the Interior, and the Substance and Mental Health Services Administration of HHS.

#### Meeting Agenda

The preliminary agenda for this meeting includes presentations on and discussion of the Affordable Care Act (ACA) and its ramifications for adolescent and young adult populations, including youth transitioning from juvenile justice and child welfare systems. In addition, it is anticipated that member agencies and practitioners will provide updates on activities of relevance to the Council.

#### Registration

For security purposes, members of the public who wish to attend the meeting must pre-register online at [www.juvenilecouncil.gov](http://www.juvenilecouncil.gov) no later than

Wednesday, October 2, 2013. Should problems arise with web registration, call Daryel Dunston at 240–221–4343 or send a request to register to Mr. Dunston. Include name, title, organization or other affiliation, full address and phone, fax and email information and send to his attention either by fax to 301–945–4295, or by email to [ddunston@edjassociates.com](mailto:ddunston@edjassociates.com). [Note: these are not toll-free telephone numbers.] Additional identification documents may be required. Space is limited.

**Note:** Photo identification will be required for admission to the meeting.

**Written Comments:** Interested parties may submit written comments and questions by Wednesday, October 2, 2013, to Kathi Grasso, Designated Federal Official for the Coordinating Council on Juvenile Justice and Delinquency Prevention, at [Kathi.Grasso@usdoj.gov](mailto:Kathi.Grasso@usdoj.gov). The Coordinating Council on Juvenile Justice and Delinquency Prevention expects that the public statements presented will not repeat previously submitted statements. Written questions from the public may also be invited at the meeting.

**Robert L. Listenbee,**

*Administrator.*

[FR Doc. 2013–22947 Filed 9–20–13; 8:45 am]

**BILLING CODE 4410–18–P**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Information Collection; Submission for OMB Review, Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled President's Higher Education Community Service Honor Roll Application for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling Robert Bisi of CNCS at (202) 606–6638 or sending an email to [rbisi@cns.gov](mailto:rbisi@cns.gov). Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

**ADDRESSES:** Comments may be submitted, identified by the title of the

information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for CNCS, by either of the following two methods within 30 days from the date of publication in the **Federal Register**:

- (1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or
- (2) *By email to:* [smar@omb.eop.gov](mailto:smar@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

#### Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on July 22, 2013. This comment period ended September 20, 2013. No public comments were received from this Notice.

**Description:** CNCS is seeking approval of the application for the President's Higher Education Community Service Honor Roll, which is used by higher education institutions to report their institution's exemplary commitment to community service in order to be recognized on the Honor Roll.

**Type of Review:** Renewal.

**Agency:** Corporation for National and Community Service.

**Title:** President's Higher Education Community Service Honor Roll.

**OMB Number:** 3045–0120.

**Agency Number:** None.

**Affected Public:** The affected publics are accredited institutions of higher education.

**Total Respondents:** 4,500.

**Frequency:** Annual.

**Average Time per Response:** Averages 1 Hour.

**Estimated Total Burden Hours:** 4,500.

**Total Burden Cost (capital/startup):** None.

*Total Burden Cost (operating/maintenance):* None.

**Ted Miller,**

*Chief, Office of External Affairs.*

[FR Doc. 2013-23057 Filed 9-20-13; 8:45 am]

**BILLING CODE 6050-28-P**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Information Collection; Submission for OMB Review, Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled VISTA Revision Concept Paper, Application & Budget Instructions for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Kelly Daly, at (202) 606-6849 or email to [vista@americorps.gov](mailto:vista@americorps.gov). Individuals who use a telecommunications device for the deaf (TTY-TDD) may call 1-800-833-3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

**ADDRESSES:** Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

- (1) *By fax to:* (202) 395-6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or
- (2) *By email to:* [smar@omb.eop.gov](mailto:smar@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and

- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

### Comments

A 60-day public comment Notice was published in the **Federal Register** on March 8, 2013. This comment period ended May 7, 2013. No public comments were received from this Notice.

*Description:* CNCS is seeking approval of the AmeriCorps VISTA Concept Paper, Application and Budget Instruction forms, which are used by potential and current AmeriCorps VISTA sponsors to request AmeriCorps VISTA members and resources.

*Type of Review:* Revision.

*Agency:* Corporation for National and Community Service.

*Title:* Concept Paper, Application, Budget Instructions.

*OMB Number:* 3045-0038.

*Agency Number:* None.

*Affected Public:* Potential and Current AmeriCorps VISTA project sponsors.

*Total Respondents:* 900.

*Frequency:* One time for the Concept Paper and annually for the Application and Budget Instructions.

*Average Time Per Response:* 15 hours.

*Estimated Total Burden Hours:* 13,500 hours.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* None.

Dated: September 16, 2013.

**Mary Strasser,**

*Director, AmeriCorps VISTA.*

[FR Doc. 2013-22970 Filed 9-20-13; 8:45 am]

**BILLING CODE 6050-28-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### TRICARE; Calendar Year 2014 TRICARE Young Adult Program Premium Update

**AGENCY:** Office of the Secretary of Defense, DoD.

**ACTION:** Notice of Updated TRICARE Young Adult Premiums for Calendar Year 2014.

**SUMMARY:** This notice provides the updated TRICARE Young Adult program premiums for Calendar Year (CY) 2014.

**DATES:** The CY 2014 rates contained in this notice are effective for services on or after January 1, 2014.

**ADDRESSES:** TRICARE Management Activity, Policy and Benefits Branch, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042-5101.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark A. Ellis, (703) 681-0039.

**SUPPLEMENTARY INFORMATION:** The final rule published in the **Federal Register** (FR) on May 29, 2013 (78 FR 32116-32121) sets forth rules to implement the TRICARE Young Adult (TYA) program as required by 10 U.S.C. 1110b. Included in the final rule were provisions for updating the TYA premiums for each CY. By law, qualified young adult dependents are charged TYA premiums that represent the full government cost of providing such coverage. Until premiums can be based on actual current year TYA costs, TYA premiums are based on the actual costs during preceding CYs for providing benefits to a similarly aged group of dependents that are TRICARE eligible. TRICARE Management Activity has updated the monthly premiums for CY 2014 as shown below:

#### MONTHLY TYA PREMIUMS FOR CY 2014

| Type of coverage             | Monthly rate |
|------------------------------|--------------|
| TRICARE Standard Plans ..... | \$156        |
| TRICARE Prime Plans .....    | 180          |

The above premiums are effective for services rendered on or after January 1, 2014.

Dated: September 18, 2013.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2013-23025 Filed 9-20-13; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Business Board; Notice of Federal Advisory Committee Meeting

**AGENCY:** DoD.

**ACTION:** Meeting notice.

**SUMMARY:** The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the Defense Business Board (DBB). The DBB was established by the Secretary of Defense in 2002 to provide the Secretary and the Deputy Secretary of Defense with independent advice and recommendations on how "best

business practices” from the private sector’s corporate management perspective might be applied to the overall management of the Department of Defense (DoD).

**DATES:** The public meeting of the Defense Business Board (hereafter referred to as “the Board”) will be held on Thursday, October 17, 2013. The meeting will begin at 9:00 a.m. and end at 10:30 a.m. (Escort required; See guidance in **SUPPLEMENTARY INFORMATION** section, “Public’s Accessibility to the Meeting.”)

**ADDRESSES:** Room 3E863 in the Pentagon, Washington, DC (escort required; See guidance in **SUPPLEMENTARY INFORMATION** section, “Public’s Accessibility to the Meeting.”)

**FOR FURTHER INFORMATION CONTACT:** *Committee’s Designated Federal Officer:* The Board’s Designated Federal Officer is Phyllis Ferguson, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, *Phyllis.I.Ferguson2@mail.mil*, 703–695–7563. For meeting information please contact Ms. Debora Duffy, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, *Debora.k.duffy.civ@mail.mil*, (703) 697–2168.

**SUPPLEMENTARY INFORMATION:** This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

**Purpose of the Meeting:** At this meeting, the Board will deliberate the findings and draft recommendations from the “Addressing Major Business Issues Facing the Department in the 2014 Quadrennial Defense Review” Task Group. The Board will also receive an update from the Task Group on “Applying Best Practices in DoD to Achieve More Effective Participation with Industry.” The mission of the Board is to examine and advise the Secretary of Defense on overall DoD management and governance. The Board provides independent advice which reflects an outside private sector perspective on proven and effective best business practices that can be applied to DoD.

**Availability of Materials for the Meeting:** A copy of the agenda and the terms of reference for the Task Group study may be obtained from the Board’s Web site at <http://dbb.defense.gov/meetings>. Copies will also be available at the meeting.

**Meeting Agenda:**

9:00 a.m.–10:30 a.m. Task Group Outbrief and Board Deliberations on “Addressing Major Business Issues Facing the Department in the 2014 Quadrennial Defense Review” Task Group Update on “Applying Best Practices in DoD to Achieve More Effective Participation with Industry”

**Public’s Accessibility to the Meeting:** Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. All members of the public who wish to attend the public meeting must contact Ms. Debora Duffy at the number listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 12:00 p.m. on Wednesday, October 9, 2013 to register and make arrangements for a Pentagon escort, if necessary. Public attendees requiring escort should arrive at the Pentagon Metro Entrance with sufficient time to complete security screening no later than 8:30 a.m. on October 17. To complete security screening, please come prepared to present two forms of identification and one must be a pictured identification card.

**Special Accommodations:** Individuals requiring special accommodations to access the public meeting should contact Ms. Duffy at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

#### **Procedures for Providing Public Comments**

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Board about its mission and topics pertaining to this public meeting.

Written comments should be received by the DFO at least five (5) business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written comments should be submitted via email to the address for the DFO given in the **FOR FURTHER INFORMATION CONTACT** section in either Adobe Acrobat or Microsoft Word format. Please note that since the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board’s Web site.

Dated: September 18, 2013.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2013–23049 Filed 9–20–13; 8:45 am]

**BILLING CODE 5001–06–P**

## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

#### **TRICARE; Fiscal Year 2014 Continued Health Care Benefit Program Premium Update**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice of Updated Continued Health Care Benefit Program Premiums for Fiscal Year 2014.

**SUMMARY:** This notice provides the updated Continued Health Care Benefit Program Premiums for Fiscal Year 2014.

**DATES:** The Fiscal Year 2014 rates contained in this notice are effective for services on or after October 1, 2013.

**ADDRESSES:** TRICARE Management Activity, Policy and Benefits Branch, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042–5101.

**FOR FURTHER INFORMATION CONTACT:** Mark A. Ellis, telephone (703) 681–0039.

**SUPPLEMENTARY INFORMATION:** The final rule published in the **Federal Register** (FR) on September 30, 1994 (59 FR 49818) sets forth rules to implement the Continued Health Care Benefit Program (CHCBP) required by 10 U.S.C. 1078a. Included in this final rule were provisions for updating the CHCBP premiums for each federal Fiscal Year. As stated in the final rule, the premiums are based on Federal Employee Health Benefit Program employee and agency contributions required for a comparable health benefits plan, plus an administrative fee. Premiums may be revised annually and shall be published annually for each Fiscal Year. TRICARE Management Activity has updated the quarterly premiums for Fiscal Year 2014 as shown below:

#### **Quarterly CHCBP Premiums for Fiscal Year 2014**

Individual \$1,193.  
Family \$2,682.

The above premiums are effective for services rendered on or after October 1, 2013.

Dated: September 18, 2013.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2013–23023 Filed 9–20–13; 8:45 am]

**BILLING CODE 5001–06–P**

**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System**

[Docket No. 2011-0052]

**Submission for OMB Review; Comment Request****ACTION:** Notice.

The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Consideration will be given to all comments received by October 23, 2013.

*Title, Associated Form, and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS), Part 204 and related clause at 252.204-7012, Safeguarding Unclassified Controlled Technical Information.

*Type of Request:* New collection.

*Number of Respondents:* 6,555.

*Responses per Respondent:* 5.

*Annual Responses:* 32,775.

*Average Burden per Response:* 3.5.

*Annual Burden Hours:* 114,713.

*Needs and Uses:* This rule aims to implement adequate security measures to safeguard unclassified DoD information within contractor information systems from unauthorized access and disclosure, and to prescribe reporting to DoD with regard to certain cyber intrusion events that affect DoD information resident on or transiting through contractor unclassified information systems.

*Affected Public:* Businesses or other for-profit and not-for profit institutions.

*Frequency:* On Occasion.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method: *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, docket number, and title for the **Federal Register** document. The general policy for comments and other public submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are

received without change, including any personal identifiers or contact information provided. To confirm receipt of your comment(s), please check <http://www.regulations.gov> approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

*DoD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350-3100.

**Manuel Quinones,**

*Editor, Defense Acquisition Regulations System.*

[FR Doc. 2013-23153 Filed 9-20-13; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF ENERGY****Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation**

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, October 9, 2013, 6:00 p.m.

**ADDRESSES:** Department of Energy Information Center, Office of Science and Technical Information, 1 Science.gov Way, Oak Ridge, Tennessee 37830.

**FOR FURTHER INFORMATION CONTACT:**

Melyssa P. Noe, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM-90, Oak Ridge, TN 37831. Phone (865) 241-3315; Fax (865) 576-0956 or email: [noemp@emor.doe.gov](mailto:noemp@emor.doe.gov) or check the Web site at [www.oakridge.doe.gov/em/ssab](http://www.oakridge.doe.gov/em/ssab).

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE-EM and site management in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

- Welcome and Announcements

- Comments from the Deputy Designated Federal Officer
- Comments from the DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons
- Public Comment Period
- Presentation
- Additions/Approval of Agenda
- Motions/Approval of September 11, 2013 Meeting Minutes
- Status of Recommendations with DOE
- Committee Reports
- Federal Coordinator Report
- Adjourn

*Public Participation:* The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: <http://www.oakridge.doe.gov/em/ssab/board-minutes.html>.

Issued at Washington, DC, on September 13, 2013.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2013-23052 Filed 9-20-13; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF ENERGY****Ultra-Deepwater Advisory Committee**

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Ultra-Deepwater Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92-

463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Tuesday, October 8, 2013, 1:00 p.m.–5:00 p.m. (EDT).

**ADDRESSES:** U.S. Department of Energy, 1000 Independence Avenue SW., Room 3G–043, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, 1000 Independence Ave. SW., Washington, DC 20585. Phone: (202) 586–5600.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* The purpose of the Ultra-Deepwater Advisory Committee is to provide advice on development and implementation of programs related to ultra-deepwater architecture and technology to the Secretary of Energy and provide comments and recommendations and priorities for the Department of Energy Annual Plan per requirements of the Energy Policy Act of 2005, Title IX, Subtitle J, Section 999D.

**Tentative Agenda**

October 8, 2013

12:30 p.m. Registration.

1:00 p.m. Welcome & Introductions, Opening Remarks, Discussion of Subcommittee Reports and Findings regarding the *Draft 2014 Annual Plan*, Discussion of Subcommittee Recommendations, Appoint Editing Committee.

4:45 p.m. Public Comments, if any.  
5:00 p.m. Adjourn.

*Public Participation:* The meeting is open to the public. The Designated Federal Officer and the Chairman of the Committee will lead the meeting for the orderly conduct of business. Individuals who would like to attend must RSVP by email to: [UltraDeepwater@hq.doe.gov](mailto:UltraDeepwater@hq.doe.gov), no later than 5:00 p.m. on Thursday, October 3, 2013. Please provide your name, organization, citizenship and contact information. Space is limited. Everyone attending the meeting will be required to present government issued identification. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Elena Melchert at the telephone number listed above. You must make your request for an oral statement at least three business days prior to the meeting, and reasonable provisions will be made to include all who wish to speak. Public comment will follow the three-minute rule.

*Minutes:* The minutes of this meeting will be available for public review and copying within 60 days at the following Web site: <http://energy.gov/fe/services/advisory-committees/ultra-deepwater-advisory-committee>.

Issued at Washington, DC, on September 17, 2013.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2013–23051 Filed 9–20–13; 8:45 am]

**BILLING CODE 6450–01–P**

**DEPARTMENT OF ENERGY**

**Environmental Management Site-Specific Advisory Board, Northern New Mexico**

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a combined meeting of the Environmental Monitoring and Remediation Committee, Waste Management Committee, and Waste Isolation Pilot Plant Ad Hoc Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico (known locally as the Northern New Mexico Citizens' Advisory Board [NNMCAB]). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, October 9, 2013, 2 p.m.–4 p.m.

**ADDRESSES:** Cities of Gold Conference Center, 94 Cities of Gold Road, Pojoaque, NM 87506.

**FOR FURTHER INFORMATION CONTACT:**

Menice Santistevan, Northern New Mexico Citizens' Advisory Board, 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: [menice.santistevan@nnsa.doe.gov](mailto:menice.santistevan@nnsa.doe.gov).

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

*Purpose of the Environmental Monitoring and Remediation Committee (EM&R):* The EM&R Committee provides a citizens' perspective to NNMCAB on current and future environmental remediation activities resulting from historical Los Alamos National Laboratory operations and, in particular, issues pertaining to groundwater, surface water and work required under the New Mexico Environment

Department Order on Consent. The EM&R Committee will keep abreast of DOE–EM and site programs and plans. The committee will work with the NNMCAB to provide assistance in determining priorities and the best use of limited funds and time. Formal recommendations will be proposed when needed and, after consideration and approval by the full NNMCAB, may be sent to DOE–EM for action.

*Purpose of the Waste Management (WM) Committee:* The WM Committee reviews policies, practices and procedures, existing and proposed, so as to provide recommendations, advice, suggestions and opinions to the NNMCAB regarding waste management operations at the Los Alamos site.

*Purpose of the Waste Isolation Pilot Plant (WIPP) Ad Hoc Committee:* The WIPP Ad Hoc Committee is preparing a recommendation on priorities at WIPP. The committee will be disbanded upon completion of the draft recommendation.

**Tentative Agenda**

1. 2:00 p.m. Approval of Agenda
2. 2:05 p.m. Approval of Minutes from September 10, 2013
3. 2:10 p.m. Old Business
  - Update from Ad Hoc Committee (Bylaw Review)
  - Information on WIPP Permit Modification (Hanford Mod)
4. 2:30 p.m. New Business
  - Election of Committee officers for Fiscal Year 2014 (WM and EM&R)
5. 2:40 p.m. Update from Executive Committee—Carlos Valdez, Chair
6. 2:50 p.m. Update from DOE—Lee Bishop, Deputy Designated Federal Officer
7. 3:00 p.m. Presentation by Mark Gardipe—DOE
  - Natural Resource Damage Assessment (NRDA) Process Overview
8. 3:45 p.m. Public Comment Period
9. 4:00 p.m. Adjourn

*Public Participation:* The NNMCAB's Committees welcome the attendance of the public at their combined committee meeting and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Committees either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five

days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

**Minutes:** Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: <http://www.nnmcab.energy.gov/>.

Issued at Washington, DC on September 16, 2013.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2013-23046 Filed 9-20-13; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, October 30, 2013, 8 a.m.–5 p.m.

The opportunities for public comment will be at 9:25 a.m. and 2:30 p.m.

These times are subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

**ADDRESSES:** Shoshone-Bannock Hotel and Event Center, I-15 Exit 80, Fort Hall, ID 83203.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Pence, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS-1203, Idaho Falls, Idaho 83415. Phone (208) 526-6518; Fax (208) 526-8789 or email: [pencerl@id.doe.gov](mailto:pencerl@id.doe.gov) or visit the Board's Internet home page at: <http://inlcab.energy.gov/>.

#### SUPPLEMENTARY INFORMATION:

**Purpose of the Board:** The purpose of the Board is to make recommendations to DOE-EM and site management in the areas of environmental restoration,

waste management, and related activities.

**Tentative Topics (agenda topics may change up to the day of the meeting; please contact Robert L. Pence for the most current agenda):**

- Recent Public Involvement
- Idaho Cleanup Project (ICP) Progress to Date
- Sodium Bearing Waste Treatment Plant Update
- Advanced Test Reactor (ATR) Complex Soil Contamination
- DOE's Site Sustainability
- Transuranic Waste Strategies (Remote-Handled and Contact-Handled)
- ICP Fiscal Year 2014 Work Plan

**Public Participation:** The EM SSAB, Idaho National Laboratory, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Robert L. Pence at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Robert L. Pence at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

**Minutes:** Minutes will be available by writing or calling Robert L. Pence, Federal Coordinator, at the address and phone number listed above. Minutes will also be available at the following Web site: <http://inlcab.energy.gov/pages/meetings.php>.

Issued at Washington, DC on September 16, 2013.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2013-23050 Filed 9-20-13; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Unconventional Resources Technology Advisory Committee

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Unconventional Resources Technology Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Thursday, October 10, 2013, 1 p.m.–5 p.m. (EDT).

**ADDRESSES:** U.S. Department of Energy, 1000 Independence Avenue SW., Room 3G-043, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, 1000 Independence Ave. SW., Washington, DC 20585. Phone: (202) 586-5600.

#### SUPPLEMENTARY INFORMATION:

**Purpose of the Committee:** The purpose of the Unconventional Resources Technology Advisory Committee is to provide advice on development and implementation of programs related to onshore unconventional natural gas and other petroleum resources to the Secretary of Energy; and provide comments and recommendations and priorities for the Department of Energy Annual Plan per requirements of the Energy Policy Act of 2005, Title IX, Subtitle J, Section 999D.

#### Tentative Agenda

*October 10, 2013*

12:30 p.m. Registration.

1:00 p.m. Welcome & Introductions, Opening Remarks, Discussion of Subcommittee Reports and Findings regarding the *Draft 2014 Annual Plan*, Discussion of Subcommittee Recommendations, Appoint Editing Committee.

4:45 p.m. Public Comments, if any.

5:00 p.m. Adjourn.

**Public Participation:** The meeting is open to the public. The Designated Federal Officer and the Chairman of the Committee will lead the meeting for the orderly conduct of business. Individuals who would like to attend must RSVP by email to: [UnconventionalResources@hq.doe.gov](mailto:UnconventionalResources@hq.doe.gov) no later than 5:00 p.m. on Monday, October 7, 2013. Please provide your name, organization, citizenship and contact information. Space is limited. Everyone attending the meeting will be required to present government issued identification. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Elena

Melchert at the telephone number listed above. You must make your request for an oral statement at least three business days prior to the meeting, and reasonable provisions will be made to include all who wish to speak. Public comment will follow the three-minute rule.

**Minutes:** The minutes of this meeting will be available for public review and copying within 60 days at the following Web site: <http://energy.gov/fe/services/advisory-committees/unconventional-resources-technology-advisory-committee>.

Issued at Washington, DC, on September 17, 2013.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2013-23045 Filed 9-20-13; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RD13-3-000]

#### Commission Information Collection Activities (FERC-725A); Comment Request

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Comment request.

**SUMMARY:** In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection FERC-725A, Mandatory Reliability Standards for the Bulk Power System, to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission solicited public comments on the information collection analysis associated with its approval of Reliability Standard EOP-004-2, in an order published in the **Federal Register** (78 FR 420064, 7/15/2013).<sup>1</sup> FERC

received no comments in response to that solicitation and is making this notation in its submission to OMB.

**DATES:** Comments on the collection of information are due by October 23, 2013.

**ADDRESSES:** Comments filed with OMB, identified by collection FERC-725A, should be sent via email to the Office of Information and Regulatory Affairs: [oira\\_submission@omb.gov](mailto:oira_submission@omb.gov). Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202-395-4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. RD13-3-000, by either of the following methods:

- *eFiling at Commission's Web site:* <http://www.ferc.gov/docs-filing/efiling.asp>.

- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

**Instructions:** All submissions must be formatted and filed in accordance with submission guidelines at: <http://www.ferc.gov/help/submission-guide.asp>. For user assistance contact FERC Online Support by email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or by phone at: (866) 208-3676 (toll-free), or (202) 502-8659 for TTY.

**Docket:** Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <http://www.ferc.gov/docs-filing/docs-filing.asp>.

#### FOR FURTHER INFORMATION CONTACT:

Ellen Brown may be reached by email at [DataClearance@FERC.gov](mailto:DataClearance@FERC.gov), by telephone at (202) 502-8663, and by fax at (202) 273-0873.

#### SUPPLEMENTARY INFORMATION:

**Title:** FERC-725A, Mandatory Reliability Standards for the Bulk Power System.

**OMB Control No.:** 1902-0244.

**Type of Request:** Three-year approval of the FERC-725A information collection requirements.

**Abstract:** The change in this information collection relates to FERC-approved Reliability Standard EOP-004-2—Event Reporting. Rather than

creating entirely new obligations to report a system disturbance, the revised Reliability Standard, EOP-004-2, primarily clarifies the thresholds that can trigger a reporting obligation, and reduces the reporting burden for certain individual respondents due to the use of a simplified form in Attachment 2. However, the revised Reliability Standard would increase the reporting burden for some individual entities, because it would apply for the first time to transmission owners and generator owners. We do not anticipate a large increase in the number of respondents because the existing Reliability Standard applies to transmission operators and generator operators, which includes the majority of the entities registered as transmission owners and generator owners.

Our estimate below regarding the number of respondents is based on the NERC compliance registry as of March 2013. According to the registry, there are 7 transmission owners that are not also transmission operators, 128 generator owners that are not also generator operators, and 101 distribution providers that are not also registered as another functional entity covered by the current event reporting standards. Thus, we estimate that a total of 236 entities may be subject to the event reporting requirements of EOP-004-2 for the first time.<sup>2</sup>

The number of annual reports required could vary widely based on the individual entity and the extent of its facilities. The estimate below is based on an assumption that, on average, 25 percent of the entities covered by EOP-004-2 will have one reportable event per year. As demonstrated below, the primary increase in cost associated with the revised standard is expected in Year 1, when newly covered entities must develop an operating plan for reporting. In Years 2 and 3, an overall *reduction* in reporting and recordkeeping burden is expected, due to the simplified reporting form.

**Type of Respondents:** Reliability Coordinator, Balancing Authority, Transmission Owner, Transmission Operator, Generator Owner, Generator Operator, and Distribution Provider.<sup>3</sup>

**Estimate of Annual Burden:**<sup>4</sup>

<sup>1</sup> North American Electric Reliability Corp., 143 FERC ¶61,252 (2013).

<sup>2</sup> Although distribution providers are included as responsible entities under the revised Reliability Standard, their reporting obligations will be *de minimis*, as explained in the Guidelines and Technical Basis attached to the revised standard. See NERC Petition, Ex. B at 13, Docket No. RD13-

3-000 (Dec. 31, 2012). For purposes of this analysis, however, we included distribution providers as part of the assumed number of reports per year.

<sup>3</sup> These entity types are contained in the North American Electric Reliability Corporation's compliance registry. See <http://www.nerc.com/page.php?cid=3|25> for more information.

<sup>4</sup> Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

| Type of respondent                                   | Reporting/recordkeeping req't                            | Number of respondents | Number of responses per respondent | Total number of responses | Average burden hours per response | Estimated total annual burden | Estimated total annual cost |
|--|--|-----------------------|------------------------------------|---------------------------|-----------------------------------|-------------------------------|-----------------------------|
|  |  | (A)                   | (B)                                | (A)×(B)=(C)               | (D)                               | (C)×(D)                       | (see below)                 |
| New Entities (GO, TO, DP).                           | Developing Operating Plan (Yr 1 Only).                   | 236                   | 1                                  | 236                       | 8                                 | 1,888                         | \$113,280.00                |
|  | Reporting Event (Yr 1, 2, and 3).                        | 59                    | 1                                  | 59                        | 0.17                              | 10.03                         | 601.80                      |
| Entities Subject to Existing Reporting Requirements. | Conforming Operating Plan to New Thresholds (Yr 1 Only). | 1164                  | 1                                  | 1164                      | 2                                 | 2,328                         | 139,680.00                  |
|  | Reporting Event (using new form) (Yrs 1, 2, and 3).      | 291                   | 1                                  | 291                       | −0.33                             | −96.03                        | (5,761.80)                  |
| Total for Year 1 <sup>5</sup> .                      | .....  | .....                 | .....                              | .....                     | .....                             | 4,130                         | 247,800                     |
| Total for each of Years 2 & 3.                       | .....  | .....                 | .....                              | .....                     | .....                             | −86 <sup>6</sup>              | (5,160)                     |

The estimated breakdown of annual cost is as follows:

- Year 1
  - New Entities, Development of Operating Plan: 236 entities \* 1 response/entity \* (8 hours/response \* \$60/hour<sup>7</sup>) = \$113,280.
  - New Entities, Event Reporting: 59 entities \* 1 response/entity \* (.17 hours/response \* \$60/hour) = \$601.80.
  - Current Responsible Entities, Conforming Operating Plan: 1164 entities \* 1 response/entity \* (2 hours/response \* \$60/hour) = \$139,680.
  - Current Responsible Entities, Event Reporting Using New Event Reporting Form: 291 entities \* 1 response/entity \* [(.17 hours/response—.5 hours/response)<sup>8</sup> \* \$60/hour] = (\$5,761.80).
- Year 2 and ongoing
  - New Entities, Using “Event

Reporting Form”: 59 entities \* 1 response/entity \* (.17 hours/response \* \$60/hour) = \$601.80.

- Old Entities, Using “Event Reporting Form”: 291 entities \* 1 response/entity \* [(.17 hours/response—.5 hours/response) \* \$60/hour] = (\$5,761.80).

*Comments:* Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: September 16, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–23004 Filed 9–20–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. IC13–16–000]

#### Commission Information Collection Activities (FERC–604); Comment Request

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Comment request.

**SUMMARY:** In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection FERC–604 (Cash Management Agreements) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (78 FR 29359, 5/20/2013) requesting public comments. FERC received no comments on the FERC–604 and is making this notation in its submittal to OMB.

**DATES:** Comments on the collection of information are due by October 23, 2013.

**ADDRESSES:** Comments filed with OMB (identified by FERC–604 and Docket No. IC13–16–000) should be sent via email to the Office of Information and Regulatory Affairs: [oir\\_submission@](mailto:oir_submission@)

<sup>5</sup> Year 1 costs include implementation costs for entities that must comply with the standard for the first time, plus the cost for entities that are currently subject to NERC event reporting requirements to review and make changes to their existing plans. The Year 1 total also includes the savings from the reduction in reporting time due to the new Event Reporting Form.

<sup>6</sup> In the Order approving the EOP Reliability Standard we incorrectly used “–81” in this cell.

<sup>7</sup> For the burden categories above, the estimated hourly loaded cost (salary plus benefits) for an engineer was assumed to be \$60/hour, based on salaries as reported by the Bureau of Labor Statistics (BLS) ([http://bls.gov/oes/current/naics2\\_22.htm](http://bls.gov/oes/current/naics2_22.htm)). Loaded costs are BLS rates divided by 0.703 and rounded to the nearest dollar (<http://www.bls.gov/news.release/ecen.nr0.htm>).

<sup>8</sup> It is estimated that the average time to complete the required event report under Reliability Standard EOP–004–1 is 30 minutes, versus an estimated 10 minutes under Reliability Standard EOP–004–2.

omb.gov. Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202-395-4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission (identified by the Docket No. IC13-16-000) by either of the following methods:

- *eFiling at Commission's Web site:* <http://www.ferc.gov/docs-filing/efiling.asp>.

- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

*Instructions:* All submissions must be formatted and filed in accordance with submission guidelines at: <http://www.ferc.gov/help/submission-guide.asp>. For user assistance contact FERC Online Support by email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or by phone at: (866) 208-3676 (toll-free), or (202) 502-8659 for TTY.

*Docket:* Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <http://www.ferc.gov/docs-filing/docs-filing.asp>.

**FOR FURTHER INFORMATION CONTACT:**

Ellen Brown may be reached by email at [DataClearance@FERC.gov](mailto:DataClearance@FERC.gov), by

telephone at (202) 502-8663, and by fax at (202) 273-0873.

**SUPPLEMENTARY INFORMATION:**

*Title:* FERC-604, Cash Management Agreements.

*OMB Control No.:* To be determined.

*Type of Request:* Three-year approval of the FERC-604 information collection requirements with no changes to the reporting requirements.

*Abstract:* Cash management or "money pool" programs typically concentrate affiliates' cash assets in joint accounts for the purpose of providing financial flexibility and lowering the cost of borrowing.

In a 2001 investigation, FERC staff found that balances in cash management programs affecting FERC-regulated entities totaled approximately \$16 billion. Additionally, other investigations revealed large transfers of funds (amounting to more than \$1 billion) between regulated pipeline affiliates and non-regulated parents whose financial conditions were precarious. The Commission found that these and other fund transfers and the enormous (mostly unregulated) pools of money in cash management programs could detrimentally affect regulated rates.

To protect customers and promote transparency, the Commission issued

Order 634-A (2003) requiring entities to formalize in writing and file with the Commission their cash management agreements. The Commission obtained OMB clearance for this new reporting requirement under the FERC-555 information collection (OMB Control No. 1902-0098). However, in subsequent extension requests to OMB for the FERC-555 collection, the Commission failed to include the cash management agreement reporting burden as part of the estimates. In this proceeding, the Commission rectifies the omission by seeking public comment on the reporting requirement in order to update the OMB clearance for cash management agreement filings. The Commission intends to put the reporting requirements under the collection number "FERC-604" and request a new OMB Control Number.

The Commission implemented these requirements in 18 CFR 141.500, 260.400, and 357.5.

*Type of Respondents:* Public utilities and licensees, natural gas companies, and oil pipeline companies.

*Estimate of Annual Burden*<sup>1</sup>: The Commission estimates the total Public Reporting Burden for this information collection as:

**FERC-604: CASH MANAGEMENT AGREEMENTS**

|   | Number of respondents | Annual number of responses per respondent | Annual total number of responses | Average annual burden hours per response | Estimated total annual burden |
|---|-----------------------|---|----------------------------------|--|-------------------------------|
|   | A                     | B   | (A) × (B) = (C)                  | D  | (C) × (D)                     |
| Public utilities and licensees, natural gas companies, and oil pipeline companies ..... | <sup>2</sup> 25       | 1   | 25                               | 1.5                                      | 37.5                          |

The total estimated annual cost burden to respondents is \$2,625 [37.5 hours \* \$70 per hour<sup>3</sup> = \$2,625].

*Comments:* Comments are invited on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those

who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: September 16, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013-23002 Filed 9-20-13; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**Combined Notice of Filings #1**

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC13-146-000.

*Applicants:* Red Oak Power, LLC.

*Description:* Red Oak Power, LLC's Section 203 Application for Authorization of Disposition of Jurisdictional Facilities.

*Filed Date:* 9/13/13.

*Accession Number:* 20130913-5125.

<sup>1</sup> Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information

collection burden, reference 5 Code of Federal Regulations 1320.3.

<sup>2</sup> This figure is based on the number of filings received by the Commission for cash management agreements over the last several years.

<sup>3</sup> This is a loaded cost (wages plus benefits) for a full-time employee.

*Comments Due:* 5 p.m. ET 10/4/13.  
Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER12–2681–002.  
*Applicants:* ITC Holdings Corp.  
*Description:* Compliance filing of the ITC Midsouth Operating Companies.  
*Filed Date:* 9/13/13.  
*Accession Number:* 20130913–5139.  
*Comments Due:* 5 p.m. ET 10/4/13.  
*Docket Numbers:* ER13–948–000.  
*Applicants:* Entergy Services, Inc.  
*Description:* Compliance Filing and Comments in Support of the September 13, 2013 MISO eTariff filing of Entergy Services, Inc. on behalf of the Entergy Operating Companies.  
*Filed Date:* 9/13/13.  
*Accession Number:* 20130913–5136.  
*Comments Due:* 5 p.m. ET 10/4/13.  
*Docket Numbers:* ER13–1686–000.  
*Applicants:* Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.  
*Description:* Refund Report to be effective N/A.  
*Filed Date:* 9/16/13.  
*Accession Number:* 20130916–5089.  
*Comments Due:* 5 p.m. ET 10/7/13.  
*Docket Numbers:* ER13–1875–001.  
*Applicants:* New England Power Pool Participants Committee, ISO New England Inc.  
*Description:* CFTC Compliance Filing RE: Associate Persons to be effective 11/12/2013.  
*Filed Date:* 9/13/13.  
*Accession Number:* 20130913–5089.  
*Comments Due:* 5 p.m. ET 10/4/13.  
*Docket Numbers:* ER13–2337–001.  
*Applicants:* Midcontinent Independent System Operator, Inc.  
*Description:* 09–13–2013 SA 2017 G540/G548 GIA Amendment to be effective 9/7/2013.  
*Filed Date:* 9/13/13.  
*Accession Number:* 20130913–5096.  
*Comments Due:* 5 p.m. ET 10/4/13.  
*Docket Numbers:* ER13–2377–000.  
*Applicants:* Portland General Electric Company  
*Description:* Price Index and Attachment C change to be effective 9/13/2013.  
*Filed Date:* 9/13/13.  
*Accession Number:* 20130913–5080.  
*Comments Due:* 5 p.m. ET 10/4/13.  
*Docket Numbers:* ER13–2378–000.  
*Applicants:* Midcontinent Independent System Operator, Inc.  
*Description:* 09–13–2013 SA 2356 IP&L–IP&L GIA (J238) to be effective 9/13/2013.  
*Filed Date:* 9/13/13.  
*Accession Number:* 20130913–5083.  
*Comments Due:* 5 p.m. ET 10/4/13.

*Docket Numbers:* ER13–2379–000.  
*Applicants:* Midcontinent Independent System Operator, Inc.  
*Description:* 2013–09–13 Attachment O Joint TO Filing to be effective 1/1/2014.  
*Filed Date:* 9/13/13.  
*Accession Number:* 20130913–5085.  
*Comments Due:* 5 p.m. ET 10/4/13.  
*Docket Numbers:* ER13–2380–000.  
*Applicants:* Puget Sound Energy, Inc.  
*Description:* Revised OATT Schedules 4 & 9—Mid-C Index to be effective 9/13/2013.  
*Filed Date:* 9/13/13.  
*Accession Number:* 20130913–5099.  
*Comments Due:* 5 p.m. ET 10/4/13.  
*Docket Numbers:* ER13–2381–000.  
*Applicants:* Ameren Illinois Company.  
*Description:* Sectionalizing Switch Replacement Letter to be effective 8/19/2013.  
*Filed Date:* 9/16/13.  
*Accession Number:* 20130916–5063.  
*Comments Due:* 5 p.m. ET 10/7/13.  
*Docket Numbers:* ER13–2382–000.  
*Applicants:* Southwest Power Pool, Inc., Tri-County Electric Cooperative, Inc.  
*Description:* Joint Request of Southwest Power Pool, Inc. and Tri-County Electric Cooperative, Inc., for Temporary, Limited Tariff Waiver.  
*Filed Date:* 9/16/13.  
*Accession Number:* 20130916–5073.  
*Comments Due:* 5 p.m. ET 10/7/13.  
*Docket Numbers:* ER13–2383–000.  
*Applicants:* Bangor Hydro Electric Company, ISO New England Inc.  
*Description:* Bangor Hydro Electric Company submits tariff filing per 35.15: Notice of Cancellation of LSA with Black Bear HVGW, LLC to be effective 8/1/2013.  
*Filed Date:* 9/16/13.  
*Accession Number:* 20130916–5075.  
*Comments Due:* 5 p.m. ET 10/7/13.  
The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.  
Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.  
eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For

other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 16, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–23036 Filed 9–20–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2712–001.  
*Applicants:* Cargill Power Markets, LLC.  
*Description:* Response to FERC letter dated September 5, 2013. Data Request of Cargill Power Markets, LLC.  
*Filed Date:* 9/12/13.  
*Accession Number:* 20130912–5062.  
*Comments Due:* 5 p.m. ET 10/3/13.  
*Docket Numbers:* ER13–2371–000.  
*Applicants:* PJM Interconnection, L.L.C.  
*Description:* Queue Position Y1–044; First Revised Service Agreement No. 3384 to be effective 8/12/2013.  
*Filed Date:* 9/11/13.  
*Accession Number:* 20130911–5075.  
*Comments Due:* 5 p.m. ET 10/2/13.  
*Docket Numbers:* ER13–2372–000.  
*Applicants:* PJM Interconnection, L.L.C.  
*Description:* Queue Position X1–045; Original Service Agreement No. 3641 to be effective 8/12/2013.  
*Filed Date:* 9/11/13.  
*Accession Number:* 20130911–5090.  
*Comments Due:* 5 p.m. ET 10/2/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 12, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–22938 Filed 9–20–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP13–1324–000.

*Applicants:* Elba Express Company, L.L.C.

*Description:* Tariff filing per 154.204: BG Negotiated Rate—Ambient Capacity to be effective 10/1/2013.

*Filed Date:* 9/13/13.

*Accession Number:* 20130913–5015.

*Comments Due:* 5 p.m. ET 9/25/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

*Docket Numbers:* RP13–40–003.

*Applicants:* National Grid LNG, LP.

*Description:* NG LNG, LP to NG LNG, LLC—NAESB to be effective 11/1/2013.

*Filed Date:* 9/12/13.

*Accession Number:* 20130912–5045.

*Comments Due:* 5 p.m. ET 9/24/13.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 13, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–23033 Filed 9–20–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC13–145–000.

*Applicants:* Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, Transource Missouri, LLC.

*Description:* Application for Authorization for Disposition and Consolidation of Jurisdictional Facilities and Request for Expedited Action of Kansas City Power & Light Company, et al.

*Filed Date:* 9/13/13.

*Accession Number:* 20130913–5027.

*Comments Due:* 5 p.m. ET 10/4/13.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2870–002; ER10–2865–002; ER10–2868–002; ER10–2853–002; ER10–2856–002; ER10–2872–002; ER10–2860–003; ER11–3013–003.

*Applicants:* TransCanada Power Marketing Ltd., TransCanada Energy Sales, Ltd., TransCanada Hydro Northeast Inc., Ocean State Power, Ocean State Power II, TransCanada Maine Wind Development Inc., Coolidge Power LLC, TC Ravenswood, LLC.

*Description:* Notice of Non-Material Change in Status of TransCanada Entities.

*Filed Date:* 9/13/13.

*Accession Number:* 20130913–5059.

*Comments Due:* 5 p.m. ET 10/4/13.

*Docket Numbers:* ER11–3013–002; ER10–2865–001; ER10–2870–001.

*Applicants:* Coolidge Power LLC.

*Description:* Amendment to June 28, 2013 Triennial Market Power Update for the Southwest Region of the Coolidge Power LLC, et al.

*Filed Date:* 9/13/13.

*Accession Number:* 20130913–5058.

*Comments Due:* 5 p.m. ET 10/4/13.

*Docket Numbers:* ER13–1695–001.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Midcontinent Independent System Operator, Inc. submits Escanaba Sch 43 Comp Filing to be effective 6/15/2013.

*Filed Date:* 9/12/13.

*Accession Number:* 20130912–5076.

*Comments Due:* 5 p.m. ET 10/3/13.

*Docket Numbers:* ER13–1699–001.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Midcontinent Independent System Operator, Inc. submits SA 6500 Escanaba Amended Restated Comp Filing to be effective 6/15/2013.

*Filed Date:* 9/12/13.

*Accession Number:* 20130912–5075.

*Comments Due:* 5 p.m. ET 10/3/13.

*Docket Numbers:* ER13–1759–001.

*Applicants:* Wisconsin Electric Power Company.

*Description:* Wisconsin Electric Power Company submits WPS BAOCA Letter of Concurrence—Sept 2013 to be effective 5/20/2013.

*Filed Date:* 9/12/13.

*Accession Number:* 20130912–5086.

*Comments Due:* 5 p.m. ET 10/3/13.

*Docket Numbers:* ER13–1760–001.

*Applicants:* Wisconsin Electric Power Company.

*Description:* Wisconsin Electric Power Company submits Wisconsin Electric Rate Schedule No. 129—UPPCO BAOCA Concurrence—Sept 2013 to be effective 5/20/2013.

*Filed Date:* 9/13/13.

*Accession Number:* 20130913–5051.

*Comments Due:* 5 p.m. ET 10/4/13.

*Docket Numbers:* ER13–2139–000.

*Applicants:* Merlin One, LLC.

*Description:* Merlin One, LLC submits Supplement to the Application for Authority to Engage in Sales for Resale at Market-Based Rates.

*Filed Date:* 9/11/13.

*Accession Number:* 20130911–5072.

*Comments Due:* 5 p.m. ET 10/2/13.

*Docket Numbers:* ER13–2373–000.

*Applicants:* New York Independent System Operator, Inc.

*Description:* New York Independent System Operator, Inc. submits 205 Filing MST 8 correct **Federal Register** cite to CFTC final order to be effective 9/15/2013.

*Filed Date:* 9/12/13.

*Accession Number:* 20130912–5088.

*Comments Due:* 5 p.m. ET 9/19/13.

*Docket Numbers:* ER13–2374–000.

*Applicants:* Pacific Gas and Electric Company.

*Description:* Pacific Gas and Electric Company submits Western's WPA for O'Neill Control Room, Rate Schedule FERC No. 228 to be effective 9/16/2013.

*Filed Date:* 9/13/13.

*Accession Number:* 20130913–5000.

*Comments Due:* 5 p.m. ET 10/4/13.

*Docket Numbers:* ER13–2375–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Midcontinent Independent System Operator, Inc. submits 2013–09–13 Vectren Attachment O to be effective 1/1/2014.

*Filed Date:* 9/13/13.

*Accession Number:* 20130913–5014.

*Comments Due:* 5 p.m. ET 10/4/13.

*Docket Numbers:* ER13–2376–000.

*Applicants:* Midcontinent

Independent System Operator, Inc.,  
Northern Indiana Public Service  
Company.

*Description:* Midcontinent  
Independent System Operator, Inc.  
submits 2013–09–13 NIPSCO  
Attachment O to be effective 1/1/2014.

*Filed Date:* 9/13/13.

*Accession Number:* 20130913–5036.

*Comments Due:* 5 p.m. ET 10/4/13.

The filings are accessible in the  
Commission's eLibrary system by  
clicking on the links or querying the  
docket number.

Any person desiring to intervene or  
protest in any of the above proceedings  
must file in accordance with Rules 211  
and 214 of the Commission's  
Regulations (18 CFR 385.211 and  
385.214) on or before 5:00 p.m. Eastern  
time on the specified comment date.  
Protests may be considered, but  
intervention is necessary to become a  
party to the proceeding.

eFiling is encouraged. More detailed  
information relating to filing  
requirements, interventions, protests,  
service, and qualifying facilities filings  
can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For  
other information, call (866) 208–3676  
(toll free). For TTY, call (202) 502–8659.

Dated: September 13, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–22939 Filed 9–20–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings

Take notice that the Commission has  
received the following Natural Gas  
Pipeline Rate and Refund Report filings:

#### Filings Instituting Proceedings

*Docket Numbers:* RP13–1325–000.

*Applicants:* Transcontinental Gas  
Pipe Line Company.

*Description:* Transcontinental Gas  
Pipe Line Company, LLC submits tariff  
filing per 154.403: GSS LSS SS–2 S–2  
2013 TGPL ACA Tracker Filing to be  
effective 10/1/2013.

*Filed Date:* 9/13/13.

*Accession Number:* 20130913–5046.

*Comments Due:* 5 p.m. ET 9/25/13.

*Docket Numbers:* RP13–1326–000.

*Applicants:* ANR Pipeline Company.

*Description:* Removal of Section 6.33  
to be effective 12/31/9998.

*Filed Date:* 9/13/13.

*Accession Number:* 20130913–5098.

*Comments Due:* 5 p.m. ET 9/25/13.

*Docket Numbers:* RP13–1327–000.

*Applicants:* Transcontinental Gas  
Pipe Line Company.

*Description:* Transco 2013 Penalty  
Sharing Report.

*Filed Date:* 9/13/13.

*Accession Number:* 20130913–5122.

*Comments Due:* 5 p.m. ET 9/25/13.

*Docket Numbers:* RP13–1328–000.

*Applicants:* Alliance Pipeline L.P.

*Description:* September 17–26, 2013  
Auction to be effective 9/17/2013.

*Filed Date:* 9/13/13.

*Accession Number:* 20130913–5124.

*Comments Due:* 5 p.m. ET 9/25/13.

Any person desiring to intervene or  
protest in any of the above proceedings  
must file in accordance with Rules 211  
and 214 of the Commission's  
Regulations (18 CFR 385.211 and  
385.214) on or before 5:00 p.m. Eastern  
time on the specified comment date.  
Protests may be considered, but  
intervention is necessary to become a  
party to the proceeding.

#### Filings in Existing Proceedings

*Docket Numbers:* RP13–1105–003.

*Applicants:* Energy West  
Development, Inc.

*Description:* Energy West  
Development, Inc. submits tariff filing  
per 154.203: Compliance Filing to 152  
to be effective 12/1/2012.

*Filed Date:* 9/13/13.

*Accession Number:* 20130913–5054.

*Comments Due:* 5 p.m. ET 9/25/13.

Any person desiring to protest in any  
of the above proceedings must file in  
accordance with Rule 211 of the  
Commission's Regulations (18 CFR  
385.211) on or before 5:00 p.m. Eastern  
time on the specified comment date.

The filings are accessible in the  
Commission's eLibrary system by  
clicking on the links or querying the  
docket number.

eFiling is encouraged. More detailed  
information relating to filing  
requirements, interventions, protests,  
service, and qualifying facilities filings  
can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For  
other information, call (866) 208–3676  
(toll free). For TTY, call (202) 502–8659.

Dated: September 16, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–23034 Filed 9–20–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP13–84–000]

#### Texas Eastern Transmission, LP; Notice of Availability of the Environmental Assessment for the Proposed Texas Eastern Appalachia to Market Project

The staff of the Federal Energy  
Regulatory Commission (FERC or  
Commission) has prepared an  
environmental assessment (EA) for the  
Texas Eastern Appalachia to Market  
Project (TEAM 2014), proposed by  
Texas Eastern Transmission, LP (Texas  
Eastern) in the above-referenced docket.  
Texas Eastern requests authorization to  
construct, modify, operate, and  
maintain new natural gas pipeline  
facilities in Pennsylvania, West  
Virginia, Ohio, Kentucky, Tennessee,  
Alabama, and Mississippi. The project  
would provide an additional 600,000  
dekatherms per day of natural gas to  
markets along Texas Eastern's system.

The EA assesses the potential  
environmental effects of the  
construction and operation of the TEAM  
2014 Project in accordance with the  
requirements of the National  
Environmental Policy Act (NEPA). The  
FERC staff concludes that approval of  
the proposed project, with appropriate  
mitigating measures, would not  
constitute a major federal action  
significantly affecting the quality of the  
human environment.

The U.S. Army Corps of Engineers  
participated as a cooperating agency in  
the preparation of the EA. Cooperating  
agencies have jurisdiction by law or  
special expertise with respect to  
resources potentially affected by the  
proposal and participate in the NEPA  
analysis.

The TEAM 2014 Project involves the  
following facilities:

- Constructing approximately 33.6  
miles of 36-inch-diameter natural gas  
transmission pipeline comprised of  
seven separate pipeline loops<sup>1</sup> and  
associated pipeline facilities in  
Pennsylvania;
- horsepower upgrades at four  
existing compressor stations in  
Pennsylvania;
- and modifications to numerous  
existing facilities to allow bi-directional  
flow/transmission of natural gas. The bi-  
directional flow modifications would  
occur at 18 existing compressor stations,

<sup>1</sup> A pipeline loop is constructed parallel to an  
existing pipeline to increase capacity.

17 existing pig<sup>2</sup> launcher and receiver sites, and two existing meter and regulating facilities in Pennsylvania, West Virginia, Ohio, Kentucky, Tennessee, Alabama, and Mississippi.

The FERC staff mailed copies of the EA to federal The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site ([www.ferc.gov](http://www.ferc.gov)) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502-8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before October 16, 2013.

For your convenience, there are three methods you can use to file your comments to the Commission. In all instances, please reference the project docket number (CP13-84-000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502-8258 or [efiling@ferc.gov](mailto:efiling@ferc.gov).

(1) You can file your comments electronically using the eComment feature on the Commission's Web site ([www.ferc.gov](http://www.ferc.gov)) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's Web site ([www.ferc.gov](http://www.ferc.gov)) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by

clicking on "eRegister." You must select the type of filing you are making. If you are filing a comment on a particular project, please select "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).<sup>3</sup> Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC Web site ([www.ferc.gov](http://www.ferc.gov)) using the eLibrary link. Click on the eLibrary link, click on "General Search," and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP13-84). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to [www.ferc.gov/esubscribenow.htm](http://www.ferc.gov/esubscribenow.htm).

Dated: September 16, 2013.

**Kimberly D. Bose,**

Secretary.

[FR Doc. 2013-23000 Filed 9-20-13; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 14538-000]

#### Go With the Flow Hydro Power, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 22, 2013, Go with the Flow Hydro Power, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Go with the Flow Hydroelectric Project (project) to be located on the Umatilla River, near the City of Hermiston, Umatilla County, Oregon. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would use the following existing facilities from an abandoned hydroelectric project: (1) A 3.5-foot-high, 120-foot-long concrete diversion weir, (2) a concrete intake structure with trashrack, (3) a 5,350-foot-long earthen power canal, (4) a concrete penstock headworks structure, (5) four 5-foot-diameter, 280-foot-long welded steel penstocks, (6) a 60-foot by 35-foot powerhouse, (7) a 20-foot by 12-foot metal controlhouse, (8) four 300-kilowatt vertical propeller turbine-generators, (9) a 60-foot-wide, 25-foot-long earthen tailrace discharging into the Umatilla River, (10) a substation with transformer providing connection to electric transmission lines operated by Pacific Power and Light Company, and (11) appurtenant facilities. The applicant is also proposing a new fish bypass at the diversion weir, and refurbishing and replacing the fish screens at the intake structure.

Estimated annual generation of the project would be 3 gigawatt-hours. The project would not be located on any federal lands.

**Applicant Contact:** Mr. Mark Sigl, President, Go with the Flow Hydro Power, LLC, 8021 Firestone Way, Antelope, California 95843; phone: (916) 812-5051.

**FERC Contact:** Sean O'Neill; phone: (202) 502-6462.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60

<sup>2</sup> A "pig" is a tool that is inserted into and moves through the pipeline, and is used for cleaning the pipeline, internal inspections, or other purposes.

<sup>3</sup> See the previous discussion on the methods for filing comments.

days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P-14538-000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-14538) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 16, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013-23003 Filed 9-20-13; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RM98-1-000]

#### Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto

in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped chronologically, in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

| Docket No.                            | Filed date | Presenter or requester             |
|---------------------------------------|------------|------------------------------------|
| <i>Prohibited:</i>                    |            |                                    |
| 1. CP13-523-000 .....                 | 08-28-13   | Nancy & Slim Whatley.              |
| <i>Exempt:</i>                        |            |                                    |
| 1. P-2485-000 .....                   | 09-06-13   | Hon. James P. McGovern.            |
| 2. ER13-2031-000, ER13-2033-000 ..... | 09-06-13   | Chm Eric F. Skrmetta. <sup>1</sup> |
| 3. CP13-507-000 .....                 | 09-10-13   | Hon. Patty Murray.                 |
| 4. ER13-2140-000 .....                | 09-10-13   | Hon. Timothy J. Solobay.           |
| 5. CP13-483-000, CP13-492-000 .....   | 09-12-13   | Army Corps of Engineers.           |

Dated: September 17, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013-23035 Filed 9-20-13; 8:45 am]

**BILLING CODE 6717-01-P**

<sup>1</sup> Letters submitted individually to the Chairman, and each Commissioner.

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. CP13-542-000]

**Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization**

Take notice that on September 6, 2013, Columbia Gas Transmission, LLC (Columbia), 5151 San Felipe, Suite 2500, Houston, Texas 77056, filed in Docket No. CP13-542-000, a prior notice request pursuant to sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) as amended, requesting authorization to abandon five underperforming natural gas storage wells, the associated well lines, and appurtenances in Ashland and Richland Counties, Ohio; Jackson County, West Virginia; and Washington County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or TTY, contact (202) 502-8659.

Specifically, at the Pavonia Storage Field in Ashland County, Ohio, Columbia proposes to abandon one storage well, the associated pipeline, and appurtenances. At the Weaver Storage Field in Richland County, Ohio, Columbia proposes to abandon two storage wells, the two associated pipelines, and appurtenances. At the Ripley Storage Field in Jackson County, West Virginia, Columbia proposes to abandon one storage well, the associated pipeline, and appurtenances. Finally, at the Donegal Storage Field in Washington County, Pennsylvania, Columbia proposes to abandon one storage well, the associated pipeline, and appurtenances.

Any questions concerning this application may be directed to Frederic J. George, Senior Counsel, Columbia Gas Transmission, LLC, PO Box 1273, Charleston, West Virginia 25325-1273, by telephone at (304) 357-2359 or by facsimile at (304) 357-3206.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice

of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or

intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: September 16, 2013..

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2013-23001 Filed 9-20-13; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Western Area Power Administration****Parker-Davis Project—Rate Order No. WAPA-162**

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Extension of Firm Electric and Transmission Service Formula Rates.

**SUMMARY:** This action extends the existing Parker-Davis Project (P-DP) firm electric and transmission service formula rates through September 30, 2018. The existing Firm Electric and Transmission Service Rate Schedules PD-F7, PD-FT7, PD-FCT7, and PD-NFT7 were set to expire on September 30, 2013. These firm electric and transmission service rate schedules contain formula rates that are calculated annually using updated financial and sales data.

**FOR FURTHER INFORMATION CONTACT:** Mr. Darrick Moe, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005-6457, (602) 605-2453, email [moe@wapa.gov](mailto:moe@wapa.gov), or Mr. Jack Murray, Rates Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005-6457, (602) 605-2442, email [jmurray@wapa.gov](mailto:jmurray@wapa.gov).

**SUPPLEMENTARY INFORMATION:** By Delegation Order No. 00-037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

The existing Rate Schedules PD-F7, PD-FT7, PD-FCT7, and PD-NFT7

under Rate Order No. WAPA-138<sup>1</sup> were approved for a 5-year period beginning on October 1, 2008, and ending September 30, 2013.

Western proposed extending the current rate schedules pursuant to 10 CFR 903.23(a) under Rate Order No. WAPA-162. The notice of proposed extension was published in the **Federal Register** on June 11, 2013 (78 FR 35022). As allowed by 10 CFR 903.23(a), Western provided for a consultation and comment period, but did not conduct public information forums or public comment forums. The consultation and comment period ended on July 11, 2013.

Following review of Western's proposal within the Department of Energy, I hereby approve Rate Order No. WAPA-162, which extends the existing Firm Electric and Transmission Service Rate Schedules PD-F7, PD-FT7, PD-FCT7, and PD-NFT7 through September 30, 2018. Rate Order No. WAPA-162 will be submitted to FERC for confirmation and approval on a final basis.

Dated: September 16, 2013.

**Daniel B. Poneman,**  
*Deputy Secretary.*

*Deputy Secretary*

Rate Order No. WAPA-162

In the Matter of: Western Area Power Administration Rate Extension for Parker-Davis Project Firm Electric and Transmission Service Formula Rate Schedules

#### **Order Confirming and Approving an Extension of the Parker-Davis Project Firm Electric and Transmission Service Formula Rate Schedules**

Section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152) transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts that specifically apply to the project involved.

By Delegation Order No. 00-037.00, effective December 6, 2001, the Secretary of Energy delegated (1) the authority to develop power and transmission rates to the Administrator of the Western Area Power

Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). This extension is issued pursuant to the Delegation Order and DOE rate extension procedures at 10 CFR 903.23(a).

#### **Background**

On February 27, 2009, in Docket No. EF08-5041-000 at 126 FERC ¶ 62,157, FERC issued an order confirming, approving, and placing into effect on a final basis the Firm Electric and Transmission Service Rate Schedules PD-F7, PD-FT7, PD-FCT7, and PD-NFT7 for the Parker-Davis Project (P-DP). The firm electric and transmission service rate schedules under Rate Order No. WAPA-138 were approved for 5 years beginning October 1, 2008, through September 30, 2013.

On June 11, 2013, pursuant to 10 CFR 903.23(a), Western published a notice in the **Federal Register** proposing to extend Rate Schedules PD-F7, PD-FT7, PD-FCT7, and PD-NFT7, as Rate Order No. WAPA-162 (78 FR 35022). Western provided for a consultation and comment period, but did not conduct public information forums or public comment forums. The consultation and comment period ended on July 11, 2013.

#### **Comments**

All formally submitted comments have been considered in preparing this Rate Order. A written comment was received during the consultation and comment period from the Irrigation & Electrical Districts Association of Arizona, Arizona. The comment and response regarding the rate extension, paraphrased for brevity when not affecting the meaning of the statement, is discussed below.

*Comment:* The commenter wrote that it supports the proposal to extend the existing firm electric and transmission service formula rates. Further, the commenter expressed its belief that the proposal is evidence of a successful relationship between Western and the P-DP customers.

*Response:* Western appreciates the commenter's feedback.

#### **Discussion**

On September 30, 2013, the existing Firm Electric and Transmission Service Rate Schedules PD-F7, PD-FT7, PD-FCT7, and PD-NFT7 will expire. This makes it necessary to extend the existing rate schedules under 10 CFR

903.23(a). The existing firm electric and transmission service formula rates provide adequate revenue to pay all annual costs, including interest expense, and to repay investment within the cost recovery criteria set forth in DOE Order RA 6120.2. Rate Order No. WAPA-162 extends the existing rate schedules through September 30, 2018, thereby continuing to ensure project repayment within the cost recovery criteria.

#### **Order**

In view of the forgoing and under the authority delegated to me, I hereby extend from October 1, 2013, and ending September 30, 2018, the existing Firm Electric and Transmission Service Rate Schedules PD-F7, PD-FT7, PD-FCT7, and PD-NFT7 on an interim basis for service for the Parker-Davis Project. The existing Firm Electric and Transmission Service Rate Schedules PD-F7, PD-FT7, PD-FCT7, and PD-NFT7 for service for the Parker-Davis Project, shall remain in effect pending FERC confirmation and approval of their extension or substitute rates on a final basis through September 30, 2018.

Dated: September 16, 2013.

**Daniel B. Poneman,**  
*Deputy Secretary.*

[FR Doc. 2013-23054 Filed 9-20-13; 8:45 am]

**BILLING CODE 6450-01-P**

#### **FEDERAL DEPOSIT INSURANCE CORPORATION**

#### **Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager**

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Update listing of financial institutions in liquidation.

**SUMMARY:** Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at [www.fdic.gov/bank/](http://www.fdic.gov/bank/)

<sup>1</sup> FERC confirmed and approved the rate schedules on a final basis through delegated order on February 27, 2009, in Docket No. EF08-5041-000 (126 FERC ¶ 62,157).

*individual/failed/banklist.html* or contact the Manager of Receivership

Oversight in the appropriate service center.

Dated: September 16, 2013.

Federal Deposit Insurance Corporation.

**Pamela Johnson,**

*Regulatory Editing Specialist.*

# INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

| FDIC Ref. No. | Bank name   | City             | State | Date closed |
|---------------|---|------------------|-------|-------------|
| 10488 .....   | First National Bank also operating as The National Bank of El Paso. | Edinburg .....   | TX    | 9/13/2013   |
| 10489 .....   | The Community's Bank .....  | Bridgeport ..... | CT    | 9/13/2013   |

[FR Doc. 2013-23055 Filed 9-20-13; 8:45 am]

BILLING CODE 6714-01-P

## FEDERAL TRADE COMMISSION

[File No. 131 0070]

### Honeywell International, Inc.; Analysis of Agreement Containing Consent Order To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before October 15, 2013.

**ADDRESSES:** Interested parties may file a comment at <https://ftcpublic.commentworks.com/ftc/honeywellintermecconsent> online or on paper, by following the instructions in the Request for Comment part of the

**SUPPLEMENTARY INFORMATION** section below. Write “Honeywell Intermec, File No. 131 0070” on your comment and file your comment online at <https://ftcpublic.commentworks.com/ftc/honeywellintermecconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** David Morris (202-326-3156), FTC, Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade

Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 13, 2013), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 15, 2013. Write “Honeywell Intermec, File No. 131 0070” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or

other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>1</sup> Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/honeywellintermecconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that Web site.

If you file your comment on paper, write “Honeywell Intermec, File No. 131 0070” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

<sup>1</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

Visit the Commission Web site at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 15, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

## **Analysis of Agreement Containing Consent Order To Aid Public Comment**

### *I. Introduction*

The Federal Trade Commission ("Commission") has accepted from Honeywell International Inc. ("Honeywell"), subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement"). The Consent Agreement, which contains a proposed Decision and Order ("Order"), is designed to remedy the anticompetitive effects resulting from Honeywell's proposed acquisition of Intermec Inc. ("Intermec").

Pursuant to an agreement signed on December 9, 2012 (the "Agreement"), Honeywell plans to acquire 100 percent of the voting securities of Intermec for an aggregate purchase price of approximately \$600 million (the "Acquisition"). The proposed Acquisition would result in an effective duopoly in the market for two-dimensional scan engines ("2D scan engines") in the United States. The Commission's Complaint alleges that the proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended 15 U.S.C. 45, by lessening competition in the market for 2D scan engines in the United States.

The Consent Agreement remedies the alleged violation by replacing the lost competition in the 2D scan engine market that would result from the proposed Acquisition. Under the terms of the Consent Agreement, Honeywell will license all of the United States patents necessary to make two-dimensional scan engines ("2D scan engines") to Datalogic IPTECH s.r.l., a subsidiary of Datalogic S.p.A. ("Datalogic").

The Consent Agreement and proposed Order have been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become

part of the public record. After 30 days, the Commission will review the Consent Agreement and the comments received, and decide whether it should withdraw, modify or make final the Consent Agreement and proposed Order.

### *II. The Parties*

Honeywell is a diversified technology and manufacturing company headquartered in Morristown, New Jersey with worldwide operations. Honeywell develops, manufactures and sells 2D scan engines and devices into which 2D scan engines are incorporated through its wholly-owned subsidiaries, Hand Held Products, Inc. and Metrologic Instruments, Inc. d/b/a Honeywell Scanning and Mobility.

Headquartered in Everett, Washington, Intermec is a leading manufacturer and seller of scan engines and other automated identification and data capture equipment including barcode scanners, barcode printers, RFID systems and voice recognition systems.

### *III. Scan Engines*

The relevant line of commerce in which to analyze the effects of the proposed Acquisition is 2D scan engines. 2D scan engines have a 2D image sensor that captures an image (such as a barcode) through a digital photograph. The 2D scan engine then translates the image into a digital format that computer processors can interpret and analyze. Products such as retail store scanners, kiosks and rugged mobile handheld computers utilize 2D scan engines to capture and decode digital data.

Customers of 2D scan engines demand compact scanners that can accurately read all types of one-dimensional and 2D images, and that have a good field of view and reading range. 2D scan engines are the only scanning products that meet these specifications. One-dimensional scan engines are unable to read most types of 2D images and are not viable substitutes for 2D scan engines. Scanning functions on smart phones and similar consumer devices do not offer the speed, accuracy, reading range or field of view of 2D scan engines. As a result, customers would likely not switch to alternate scanning products (such as one-dimensional scan engines or smart phones) in response to a five to ten percent increase in the price of 2D scan engines in sufficient numbers to make that price increase unprofitable to a hypothetical monopolist.

The relevant geographic area in which to analyze the effects of the Acquisition on the 2D scan engine market is the

United States. 2D scan engine suppliers who want to sell their scan engines to customers who intend to incorporate the scan engines into products that will be sold into the United States must own or have a license to U.S. patents covering 2D scan engine technology and be able to indemnify their customers against the threat of a patent suit.

The market for 2D scan engines in the United States is highly concentrated. Honeywell, Intermec and Motorola are the three most significant participants in the 2D scan engine market in the United States. Post-Acquisition, the combined share of the two firms—Honeywell and Motorola—would be in excess of 80%. Additionally, Honeywell, Intermec and Motorola are the only 2D scan engine firms in the U.S. that have deep and broad portfolios of relevant intellectual property ("IP") that insulate them and their customers from infringement suits.

There are a number of fringe 2D scan engine manufacturers who sell 2D scan engines to customers outside of the United States, and to a lesser extent, to customers who incorporate the scan engines into products sold in the United States. In aggregate, the fringe competitors' account for less than 20% of all 2D scan engines sold in the United States. While the fringe competitors are increasingly important competitors to Honeywell, Intermec and Motorola outside of the United States as a result of their growing technical capabilities, they are constrained from expanding their sales of 2D scan engines into products that will be sold in the United States because they do not possess the relevant U.S. IP rights. Without ownership of, or a license to, the relevant IP, the fringe competitors are not a significant competitive constraint to Honeywell, Intermec and Motorola for the sale of 2D scan engines for use in products sold in the United States.

The proposed Acquisition increases the likelihood of coordinated interaction between Honeywell and the major remaining player in the market, Motorola. Industry participants recognize that Honeywell, Intermec and Motorola are the "Big Three" players in the market. As noted above, the fringe 2D scan engine competitors do not constrain the pricing of the "Big Three." Accordingly, the proposed Acquisition increases the risk that the two remaining players, Honeywell and Motorola, will compete less aggressively, diminishing the level of competition in the market.

New entry, repositioning or expansion will not be sufficient to deter or counteract the anticompetitive effects of the proposed Acquisition in a timely manner. The most significant barrier to entry and expansion in the United

States is IP. For example, although 2D scan engine companies other than Honeywell, Intermec and Motorola have the ability to, and do, manufacture 2D scan engines, customers who incorporate the scan engines into products for sale into the United States are generally unwilling to purchase from them because they cannot provide customers with indemnification from patent infringement suits.

#### *IV. The Consent Agreement*

The Consent Agreement eliminates the competitive concerns raised by Honeywell's proposed acquisition of Intermec by requiring Honeywell to license Honeywell and Intermec's U.S. patents covering technology used in 2D scan engines. The Consent Agreement requires Honeywell to license the relevant patents to Datalogic, or another licensee approved by the Commission through a license agreement approved by the Commission.

Datalogic has the industry experience, reputation and resources to replace Intermec as an effective competitor in the U.S. 2D scan engine market. It is headquartered in Bologna, Italy, with its North American design headquarters in Eugene, Oregon. Datalogic is well positioned to replace the competition that will be eliminated as a result of the proposed Acquisition. The company has developed 2D scan engines that it markets outside of the U.S. These 2D scan engines are of similar quality to those offered by Honeywell and Intermec. However, Datalogic does not currently compete against Honeywell and Intermec in the sale of 2D scan engines in the U.S. Datalogic also sells products that incorporate 2D scan engines, such as in-counter checkout scanners and airport kiosk scanners (where it is one of the global leaders), hand held scanners (where it is a top player globally), and rugged mobile computers (where it is the fourth-largest player globally).

Pursuant to the Consent Agreement, Datalogic (or another approved licensee) would receive a license to all of the Honeywell and Intermec U.S. IP covering technology used in 2D scan engines and related devices (excluding non-retail fixed scanners) necessary to produce and sell 2D scan engines in the U.S. Obtaining the proposed license from Honeywell would enable the approved licensee to sell products without fear of an IP suit and to offer the required indemnification to market 2D scan engines in the U.S. The license extends for twelve years, which is the life of the primary blocking patents owned by Honeywell. In addition to licensing the U.S. patents, the Consent

Agreement prohibits Honeywell from filing infringement actions against the approved licensee, its suppliers and customers based on the approved licensee's 2D scan engines or related devices. This provides the approved licensee with global freedom to research, develop, market and sell its 2D scan engines and related devices without fear of infringement suits by Honeywell. The Consent Agreement also prohibits Honeywell from selling or assigning the patents included in the license to anyone who does not agree to abide by the terms of the Order with respect to those acquired patents.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2013-22966 Filed 9-20-13; 8:45 am]

**BILLING CODE 6750-01-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Disease Control and Prevention**

#### **Statement of Organization, Functions, and Delegations of Authority**

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 78 FR 35936, dated June 14, 2013) is amended to reorganize the National Center for Health Statistics, Centers for Disease Control and Prevention.

Section C-B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the titles and functional statements for the Division of Vital Statistics (CPCC) and insert the following:

Division of Vital Statistics (CPCC). Plans and administers complex data collection systems and conducts a program of methodologic and substantive public health research activities based on the nationwide collection of data from vital records, follow back surveys, and demographic surveys of people in the childbearing ages. (1) Participates in the development of policy, long-range plans, and

programs of the Center; (2) directs, plans, and coordinates the vital statistics program of the United States; (3) administers the vital statistics cooperative program, including the National Death Index; (4) develops standards for vital statistics data collection including electronic systems, data reduction, and tabulation; (5) interprets, classifies, and compiles complex demographic, economic, health, and medical data; (6) serves as the United States representative to the World Health Organization (WHO), regarding the International Classification of Diseases (ICD) for mortality data and the classification and coding of cause of death; (7) conducts research to determine cross-national comparability of causes of death to further enhance the ICD and make appropriate recommendations to WHO; (8) conducts research on data collection methodology, survey methodology, data quality and reliability, and statistical computation as related to vital and survey statistics; (9) conducts multidisciplinary research directed toward development of new scientific knowledge on the demographics of reproduction, natality, and mortality; (10) performs theoretical and experimental investigations into the content of the vital statistics data collection effort; (11) develops sophisticated approaches to making vital statistics data available to users, including techniques to avoid disclosure of confidential data; (12) conducts descriptive analyses and sophisticated multivariate analyses that integrate vital statistics data across multiple surveys or data sets; (13) provides technical assistance and consultation to international, State, and local offices with vital registration responsibilities on vital registration, vital statistics, and data processing; (14) researches, designs, develops, and implements state-of-the-art computing systems for collecting, storing, and retrieving vital records and for subsequent analysis and dissemination; (15) conducts methodological research on the tools for evaluation, utilization, and presentation of vital statistics and related survey data and medical classification; (16) assesses the security of the DVS IT systems and data files and develops and implements strategies to minimize any security risks; (17) produces and publishes a wide variety of vital statistics analytic reports and tabulations in multiple formats; and (18) develops and sustains collaborative partnerships within NCHS, CDC, DHHS, and externally with public, private,

domestic and international entities on vital statistics programs.

Office of the Director (CPCC1). (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) provides leadership for the monitoring and statistical evaluation of national vital statistics; (3) directs, plans, and coordinates the statistical and research activities of the Division; (4) develops and administers a research and analytic program in registration and vital statistics; (5) develops policy, practices, and management for the National Death Index program; (6) plans and conducts a program to improve the vital registration and statistics program of the U.S.; (7) conducts studies of new vital registration techniques; (8) recommends content and format of model legislation, regulations, standard certificates, and other aids to registration systems; (9) provides international leadership and consultation on vital registration and statistics issues to other countries; (10) establishes collaborative partnerships within NCHS, CDC, DHHS, and externally with public, private, domestic and international entities on vital statistics programs; and (11) manages the vital statistics data request program for the Division.

Data Acquisition, Classification and Evaluation Branch (CPCCB). (1) Provides policy direction to states regarding vital statistics data acquisition and quality control; (2) promotes state participation in the vital statistics cooperative program and the national death index (NDI) program; (3) develops specifications for coding, editing and processing of vital registration and statistics data; (4) develops and administers funding formulas that determine the level of reimbursement to states and the procurement mechanisms to effect this reimbursement; (5) develops and directs a comprehensive statistical quality assurance program to assure that the data received from each registration area are acceptable for national use; (6) provides technical assistance to states, local areas, other countries, and private organizations on data files, software, training, processing and coding of vital statistics data; (7) in consultation with health departments across the U.S., leads and conducts evaluation studies and other research on issues related to the collection of vital statistics; (8) prepares and publishes information obtained from special projects related to vital registration and statistics data; (9) promotes the development and implementation of best statistical practices throughout the U.S. vital statistics system to maximize the utility of vital statistics data; (10)

manages the acquisition of vital statistics data from the 57 registration areas to assure a national file of timely and complete data; (11) directs a comprehensive program of technical assistance and consultation related to mortality medical data classification to states, local areas, other countries, and private organizations; (12) conducts methodological research in data preparation and medical classification of mortality data; and (13) interprets, classifies, codes, keys, and verifies medical and demographic information of value to researchers and public policy officials.

Mortality Statistics Branch (CPCCC). (1) Establishes the research agenda for mortality statistics in response to public health priorities; (2) converts identified data needs into statistical and research programs to obtain, evaluate, analyze, and disseminate mortality statistics data; (3) conducts research to improve data collection of vital records, record linkage, and sample survey methodologies related to mortality statistics; (4) performs theoretical and experimental research that improves the content of the mortality statistics data collection effort and the timeliness, availability, and quality of mortality statistics data; (5) conducts research into life tables methodology and produces annual and decennial U.S. and State life tables; (6) recommends content of U.S. Standard Certificates; (7) assesses disclosure risk and develops optimal data release strategies that improve policy analysis and decision-making; (8) prepares and publishes descriptive analyses as well as sophisticated multivariate analyses that integrate data across multiple surveys or data sets; (9) conducts research related to the International Classification of Diseases (ICD) and cause of death classification; (10) conducts national and state-specific comparability studies of cause of death classification to facilitate the study of mortality trends across ICD revisions; (11) designs and conducts methodological research to improve the collection, production, use, and interpretation of mortality-related data; (12) collaborates with other agencies and organizations in the design, implementation, and analysis of vital records surveys; (13) develops and promotes training activities related to the collection, production, use and interpretation of mortality statistics; (14) provides leadership to the international community in the use and adoption of automated mortality medical classification systems; (15) provides nosological assistance and training to DVS medical coding staff and to both

nationally and internationally groups in regard to International Classification of Diseases (ICD) information for mortality and new revisions of the ICD; and (16) develops and implements training programs for cause-of-death coding and provides technical assistance to NCHS, other Federal agencies, state, and local governments, non-government agencies, and international agencies.

Reproductive Statistics Branch (CPCCD). (1) Establishes the research agenda for reproductive statistics in response to public health priorities; (2) assesses information data needs in the fields of reproduction, maternal and child health, family formation, growth, and dissolution; (3) plans and develops statistical and research programs to obtain, evaluate, analyze, and disseminate reproductive statistics data to meet these needs; (4) conducts research to improve data collections on vital records, record linkage, and sample survey methodologies related to reproductive statistics; (5) performs theoretical and experimental research that improves the content of the reproductive statistics data collection effort and the timeliness, availability, and quality of reproductive statistics data; (6) assesses disclosure risk and develops optimal data release strategies that improve policy analysis and decision-making; (7) prepares and publishes descriptive analyses of individual data systems as well as sophisticated multivariate analyses that integrate data across multiple surveys or data sets; (8) conducts methodological research to improve statistics on reproduction, maternal and child health, family formation, growth, and dissolution; (9) recommends content of U.S. Standard Certificates; and (10) provides consultation and advice to members of Congress, the press, and a broad range of researchers and institutions at the international, national, State, and local levels on reproductive statistics data.

Information Technology Branch (CPCCE). (1) Conducts research into the design, development, and administration of vital statistics information technology systems; (2) performs systems analysis and computer programming of vital registration data; (3) develops technologies, data architectures, security infrastructure, and database management related to vital records, record linkage, and sample surveys consistent with NCHS, CDC and DHHS information technology requirements, policies and architecture; (4) develops, maintains, and employs state-of-the-art information technologies (e.g., relational data bases, Web-enabled applications, applications development

and dissemination activities) associated with vital statistics; (5) develops and maintains systems and databases to support the National Death Index program; (6) provides consultation and expert technical assistance to the Division concerning SQL server, web services, networking applications, and other technologies that may arise; (7) prepares and maintains population databases as well as conducts studies on statistical computation and data quality; (8) designs and implements information technology applications to produce final edited and imputed vital statistics and survey data; (9) provides consultation, policy guidance and expert technical assistance NCHS-wide as well as to a broad range of agencies, institutions, federal, local, and international governments, researchers, and individuals, in regard to vital statistics systems design, administration, and usage; (10) manages national vital statistics data files and databases; (11) develops, enhances, and maintains medical classification software and procedures for collecting and processing of mortality medical data in states and at NCHS following HHS Enterprise Life Cycle Framework; and (12) tests, refines, and updates automated coding systems that assist in the production of mortality data.

Dated: September 13, 2013.

**Sherri A. Berger,**

*Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2013-22909 Filed 9-20-13; 8:45 am]

**BILLING CODE 4160-18-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-76, dated October 14, 1980, and corrected at 45 FR

69296, October 20, 1980, as amended most recently at 78 FR 35936, dated June 14, 2013) is amended to reflect the establishment of the Field Support Branch, Division of Reproductive Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention.

After the mission statement for the Women's Health and Fertility Branch (CUCJE), Division of Reproductive Health (CUCJ), insert the following:

Field Support Branch (CUCJG). (1) Assists domestic and international health agencies in health services management, health services research, and translation of findings by providing technical assistance, including training, analytical assistance, and consultation; (2) builds epidemiology capacity in state, tribal, and urban maternal and child health organizations; (3) partners with states, tribes, local and national maternal and child health organizations, and federal agencies to improve maternal and child health; (4) collaborates with other training programs both inside and outside of CDC on reproductive, maternal and child health such as CDC's Epidemic Intelligence Service, Field Epidemiology Training Program, and Council of State and Territorial Epidemiologists; and (5) serves as the CDC lead for technical assistance and expertise in demographic analytical techniques for evaluating reproductive, maternal, infant and perinatal health.

Dated: September 13, 2013.

**Sherri Berger,**

*Chief Operating Officer, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 2013-22908 Filed 9-20-13; 8:45 am]

**BILLING CODE 4163-18-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### Proposed Information Collection Activity; Comment Request

*Title:* Planning Grants to Develop a Model Intervention for Youth/Young

Adults with Child Welfare Involvement At-Risk of Homelessness.

*OMB No.:* New Collection.

*Description:* The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), intends to collect data for an evaluation of the initiative, Planning Grants to Develop a Model Intervention for Youth/Young Adults with Child Welfare Involvement At-Risk of Homelessness. This 2-year initiative, funded by the Children's Bureau (CB) within ACF, will support planning grants to develop a model for intervening with youth who have experienced time in foster care and are most likely to have a challenging transition to adulthood, including homelessness and unstable housing experiences. CB anticipates awarding up to 18 planning grants (Phase I). During the planning phase, organizations will develop formal plans to implement and evaluate the model under a potential future funding opportunity (Phase II).

For Phase I, CB will engage a contractor to: provide grantees with evaluation-related technical assistance (TA), implement evaluability assessments, and conduct a cross-site process evaluation. Data collected for the process evaluation will be used to assess grantees' organizational capacity and readiness to implement and evaluate the model interventions, and to conduct regular and periodic monitoring of each grantee's progress toward achieving the goals of the planning period.

Data for the process evaluation will be collected through: (1) Telephone interviews; (2) interviews and focus groups during site visits; and (3) web-based data collection.

Respondents: Grantee agency directors and staff; partner agency directors and staff. Partner agencies may vary by site, but are expected to include child welfare, mental health, and youth housing/homelessness agencies.

#### ANNUAL BURDEN ESTIMATES

| Instrument   | Total number of respondents | Annual number of respondents | Number of responses per respondent | Average burden hours per response | Total annual burden hours |
|--|-----------------------------|------------------------------|------------------------------------|-----------------------------------|---------------------------|
| Baseline Telephone Interview of Organizational Readiness   | 540                         | 270                          | 1                                  | 1.0                               | 270                       |
| Exit Telephone Interview of Organizational Readiness ..... | 540                         | 270                          | 1                                  | 1.0                               | 270                       |
| Grantee Site Visit—Semi-Structured Interview Topic Guide   | 540                         | 270                          | 1                                  | 1.5                               | 405                       |
| Grantee Site Visit—Focus Group Guide .....                 | 540                         | 270                          | 1                                  | 1.5                               | 405                       |

## ANNUAL BURDEN ESTIMATES—Continued

| Instrument                        | Total number of respondents | Annual number of respondents | Number of responses per respondent | Average burden hours per response | Total annual burden hours |
|-----------------------------------|-----------------------------|------------------------------|------------------------------------|-----------------------------------|---------------------------|
| Web survey of program staff ..... | 180                         | 90                           | 8                                  | .5                                | 360                       |

*Estimated Total Annual Burden Hours: 1,710.*

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. Email address: [OPREinfocollection@acf.hhs.gov](mailto:OPREinfocollection@acf.hhs.gov). All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to

comments and suggestions submitted within 60 days of this publication.

**Steven M. Hanmer,**

*Reports Clearance Officer.*

[FR Doc. 2013–22961 Filed 9–20–13; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### Submission for OMB Review; Comment Request

*Title:* State Abstinence Education Program.

*OMB No.:* 0970–0381.

*Description:* The State Abstinence Program was extended through Fiscal Year 2014 under Patient Protection and Affordable Care Act of 2010 (Affordable Care Act, hereafter), Public Law 111–148.

The Family and Youth Services Bureau (FYSB) is accepting applications from States and Territories for the development and implementation of the State Abstinence Program. The purpose of this program is to support decisions to abstain from sexual activity by providing abstinence programming as defined by Section 510(b) of the Social Security Act (42 U.S.C. 710(b)) with a focus on those groups that are most likely to bear children out-of-wedlock,

such as youth in or aging out of foster care.

States are encouraged to develop flexible, medically accurate and effective abstinence-based plans responsive to their specific needs. These plans must provide abstinence education, and at the option of the State, where appropriate, mentoring, counseling, and adult supervision to promote abstinence from sexual activity, with a focus on those groups which are most likely to bear children out-of-wedlock. An expected outcome for all programs is to promote abstinence from sexual activity. Pursuant to the program announcement, all grantees must report on performance on a semiannual basis.

OMB approval is requested to solicit comments from the public on paperwork reduction as it relates to ACYF's receipt of the application, state plan, and/or semiannual reporting documents from applicants and awardees labeled:

Application

State Plan

Performance Progress Report (PPR)

*Respondents:* Application and Plan: 22 States and Territories who have not previously applied for the State Abstinence Program and PPR: 50 States and 9 Territories, to include, District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands and Palau.

## 12—ESTIMATES OF ANNUALIZED BURDEN HOURS AND COSTS

| Instrument                         | Average burden hours per response | Number of respondents | Number of responses per respondent | Total burden hours |
|------------------------------------|-----------------------------------|-----------------------|------------------------------------|--------------------|
| Application .....                  | 24                                | 22                    | 1                                  | 528                |
| State Plan .....                   | 40                                | 22                    | 1                                  | 880                |
| Performance Progress Reports ..... | 30                                | 59                    | 2                                  | 3,540              |
|                                    |                                   |                       |                                    | 4,948              |

*Total estimated annual burden hours:* 4,948.

The estimated monetary value of time is  $\$50 \times 4,948 \text{ hours} = \$247,400$ .

#### Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447,

Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov).

**OMB Comment**

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202-395-7285, Email: [OIRA\\_SUBMISSION@OMB.EOP.GOV](mailto:OIRA_SUBMISSION@OMB.EOP.GOV). Attn: Desk Officer for the Administration for Children and Families.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2013-22996 Filed 9-20-13; 8:45 am]

**BILLING CODE 4184-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Administration for Children and Families****Submission for OMB Review; Comment Request**

*Title:* State Personal Responsibility Education Program (PREP).

*OMB No.:* 0970-0380.

*Description:* The Patient Protection and Affordable Care Act, 2010, also known as health care reform, amended Title V of the Social Security Act (42 U.S.C. 701 *et seq.*) as amended by sections 2951 and 2952(c), by adding section 513, authorizing the Personal Responsibility Education Program (PREP). The President signed into law the Patient Protection and Affordable Care Act on March 23, 2010, Public Law 111-148, which added the new PREP formula grant program. The purpose of this program is to educate adolescents

on both abstinence and contraception to prevent pregnancy and sexually transmitted infections (STIs); and at least three adulthood preparation subjects. The Personal Responsibility Education grant program funding is available for fiscal years 2010 through 2014. Pursuant to monitoring these state programs, grantees submit a semiannual report on their performance.

A request is being made to solicit comments from the public on paperwork reduction as it relates to ACYF's receipt of the following document from applicants and awardees:

**Performance Progress Report**

*Respondents:* 50 States and 9 Territories, to include, District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands and Palau

**ANNUAL BURDEN ESTIMATES**

| Instrument                         | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|------------------------------------|-----------------------|------------------------------------|-----------------------------------|--------------------|
| Performance Progress Reports ..... | 59                    | 2                                  | 16                                | 1,888              |

*Estimated Total Annual Burden Hours: 1,888.*

**Additional Information**

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov).

**OMB Comment**

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202-395-7285, Email: [OIRA\\_SUBMISSION@OMB.EOP.GOV](mailto:OIRA_SUBMISSION@OMB.EOP.GOV). Attn: Desk Officer for

the Administration for Children and Families.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2013-22995 Filed 9-20-13; 8:45 am]

**BILLING CODE 4184-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration**

**[Docket No. FDA-2013-N-0985]**

**Complex Issues in Developing Drug and Biological Products for Rare Diseases; Public Workshop; Request for Comments**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing the following public workshop entitled "Complex Issues in Developing Drug and Biological Products for Rare Diseases." The purpose of the public workshop is twofold: To discuss complex issues in clinical trials for developing drug and biological products ("drugs") for rare

diseases, including endpoint development and selection, use of surrogate endpoints and the accelerated approval pathway, clinical trial design, conduct and analysis, safety considerations, and dose selection; and to discuss ways to encourage and accelerate the development of new therapies for pediatric rare diseases. FDA is seeking input on these topics from academic, clinical, and treating communities; patients and advocacy groups; industry; and governmental agencies. Input from this public workshop will help develop a strategic plan to encourage and accelerate the development of new therapies for rare diseases.

*Date and Time:* The public workshop will be held on January 6, 2014, from 8 a.m. to 5 p.m. and on January 7, 2014, from 8 a.m. to 4:45 p.m.

*Location:* The public workshop will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993-0002. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to <http://>

[www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm](http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm).

**Contact Person:** Tomeka Arnett, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6331, Silver Spring, MD 20993-0002, 301-796-2500, FAX: 301-847-3529, email: [Tomeka.Arnett@fda.hhs.gov](mailto:Tomeka.Arnett@fda.hhs.gov).

**Registration:** Registration is free and available on a first-come, first-served basis. Persons interested in attending the public workshop must register online by December 20, 2013. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permits, onsite registration on the day of the public workshop will be provided beginning at 7:30 a.m. Seating will be available on a first-come, first-served basis.

If you need special accommodations due to a disability, please contact Tomeka Arnett (see *Contact Person*) no later than 7 days in advance.

To register for the public workshop, please visit FDA's Drugs News & Events—Meetings, Conferences & Workshops calendar at <http://www.fda.gov/Drugs/NewsEvents/ucm132703.htm>. (Select this public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number. Those without Internet access should contact Tomeka Arnett to register (see *Contact Person*). Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

**Streaming Webcast of the Public Workshop:** This public workshop will also be Webcast. Persons interested in viewing the Webcast may visit FDA's Drugs News & Events—Meetings, Conferences & Workshops calendar at <http://www.fda.gov/Drugs/NewsEvents/ucm132703.htm>. (Select this public workshop from the posted events list.) Select <https://collaboration.fda.gov/drugbiord/> to view the Webcast. If you have never attended a Connect Pro event before, test your connection at [https://collaboration.fda.gov/common/help/en/support/meeting\\_test.htm](https://collaboration.fda.gov/common/help/en/support/meeting_test.htm). (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

**Comments:** FDA is holding this public workshop to obtain information about

complex issues in clinical trials for developing drugs for rare diseases and to discuss ways to encourage and accelerate the development of new therapies for pediatric rare diseases. In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of the public workshop. The deadline for submitting comments regarding this public workshop is March 10, 2014.

Regardless of attendance at the public workshop, interested persons may submit either electronic comments regarding this document to <http://www.regulations.gov> or written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific topics as outlined in section II, please identify the topic you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <http://www.regulations.gov>.

**Transcripts:** Please be advised that as soon as a transcript is available, it will be accessible at <http://www.regulations.gov>. A transcript will also be available in either hardcopy or on CD-ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM-1029), Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Orphan Drug Act of 1983 (the Orphan Drug Act) (Pub. L. 97-414), as amended, defines a “rare disease or condition” to include those that affect less than 200,000 persons in the United States. This definition is codified in section 526(a)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bb(a)(2)). The Orphan Drug Act provides incentives to reduce the cost and increase the potential reward for developing products for small numbers of patients; however, it does not alter the statutory standards for marketing approval. To gain approval, all drugs must demonstrate substantial evidence of effectiveness, safety, and product quality for the treatment of the condition in the identified patient population. FDA acknowledges that

certain aspects of drug development for rare diseases are challenging, and U.S. regulations allow for flexibility and scientific judgment in applying approval standards and in determining the kind and quantity of data required for a particular drug to meet the statutory standards.

This public workshop is being held in response to section 510—Pediatric rare diseases of the Food and Drug Administration Safety and Innovation Act (Pub. L. 122-144) (125 Stat. 1050), whereby FDA is required to hold at least one public meeting to discuss ways to encourage and accelerate the development of new therapies for pediatric rare diseases. Additionally, as stated in section IX.E—Enhancing Regulatory Science and Expediting Drug Development, Advancing Development of Drugs for Rare Diseases of the Prescription Drug User Fee Act Reauthorization Performance Goals and Procedures Fiscal Years 2013 through 2017 (available at <http://www.fda.gov/downloads/forindustry/userfees/prescriptiondruguserfee/ucm270412.pdf>), FDA will conduct a public meeting to discuss complex issues in clinical trials for studying drugs for rare diseases.

This public workshop is being held in conjunction with FDA's Center for Devices and Radiological Health and Office of Orphan Products Development public workshop entitled “Complex Issues in Developing Medical Devices for Pediatric Patients Affected by Rare Diseases,” which will be held on January 8, 2014, from 8 a.m. to 5 p.m., announced in a separate notice publishing elsewhere in this issue of the **Federal Register**.

##### **II. Topics for Discussion at the Public Workshop**

FDA is announcing a public workshop regarding complex issues in clinical trials for developing drugs for rare diseases and to discuss ways to encourage and accelerate the development of new therapies for pediatric rare diseases. The purpose of this public workshop is to seek broad input from rare disease experts and stakeholders, including industry; academic and clinical experts; patients and advocates and governmental agencies to address complex issues in rare disease product development.

Topics for discussion on day 1 include: (1) Complex issues for endpoints, including endpoint selection, use of surrogate endpoints and the accelerated approval pathway, clinical significance of primary endpoints, and development of patient-reported outcome instruments; (2)

complex issues for trial design conduct and analysis; (3) development of translational and regulatory science to support rare disease drug development; and (4) safety and dosing considerations, including safety exposures and assessment of dose selection.

Topics for discussion on day 2 include: (1) Collaborative research networks for pediatric rare diseases; (2) safety considerations for pediatric rare diseases; (3) pediatric rare cancers; and (4) development of gene therapies for rare pediatric disorders. Discussions will help develop a report that includes a strategic plan to encourage and accelerate the development of new therapies for pediatric rare diseases.

FDA encourages individuals, patients, advocates, industry, consumer groups, health care professionals, researchers and other interested persons to attend this public workshop.

Dated: September 17, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013-22959 Filed 9-20-13; 8:45 am]

BILLING CODE 4160-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2013-N-1041]

### Fibromyalgia Public Meeting on Patient-Focused Drug Development

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public meeting; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a public meeting and an opportunity for public comment on Patient-Focused Drug Development for fibromyalgia. Patient-Focused Drug Development is part of FDA's performance commitments in the fifth authorization of the Prescription Drug User Fee Act (PDUFA V). The public meeting is intended to allow FDA to obtain patients' perspectives on the impact of fibromyalgia on daily life as well as the available therapies for fibromyalgia.

**DATES:** The public meeting will be held on December 10, 2013, from 1 p.m. to 5 p.m. Registration to attend the meeting must be received by November 27, 2013. See the **SUPPLEMENTARY INFORMATION** section for information on how to register for the meeting. Submit electronic or written comments by February 10, 2013.

**ADDRESSES:** The meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, in Section A of the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for the public meeting participants is through Building 1, where routine security check procedures will be performed. For more information on parking and security procedures, please refer to <http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm>.

Submit electronic comments to [www.regulations.gov](http://www.regulations.gov). Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FDA will post the agenda approximately 5 days before the meeting at: <http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm363203.htm>.

#### FOR FURTHER INFORMATION CONTACT:

Graham Thompson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1199, Silver Spring, MD 20993, 301-796-5003, FAX: 301-847-8443, email: [Graham.Thompson@fda.hhs.gov](mailto:Graham.Thompson@fda.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background on Patient-Focused Drug Development

FDA has selected fibromyalgia as the focus of a meeting under Patient-Focused Drug Development, an initiative that involves obtaining a better understanding of patients' perspectives on the severity of the disease and the available therapies for the condition. Patient-Focused Drug Development is being conducted to fulfill FDA's performance commitments made as part of the authorization of PDUFA V under Title I of the Food and Drug Safety and Innovation Act (FDASIA) (Pub. L. 112-144). The full set of performance commitments is available on the FDA Web site at <http://www.fda.gov/downloads/forindustry/userfees/prescriptiondruguserfee/ucm270412.pdf>.

FDA has committed to obtain the patient perspective in twenty disease areas during the course of PDUFA V. For each disease area, the Agency will conduct a public meeting to discuss the disease and its impact on patients' daily lives, the types of treatment benefit that matter most to patients, and patients'

perspectives on the adequacy of the available therapies. These meetings will include participation of FDA review divisions, the relevant patient community, and other interested stakeholders.

On April 11, 2013, FDA published a notice (78 FR 08441) in the **Federal Register** announcing the disease areas for meetings in fiscal years (FY) 2013-2015, the first 3 years of the 5-year PDUFA V timeframe. To develop the list of disease areas, the Agency used several criteria that were outlined in the April 11 notice. The Agency obtained public comment on these criteria and potential disease areas through a notice for public comment published in the **Federal Register** on September 24, 2012 (77 FR 23454, and through a public meeting held on October 25, 2012. In selecting the disease areas, FDA carefully considered the public comments received and the perspectives of its review divisions. By the end of FY 2015, FDA will initiate another public process for determining the disease areas for FY 2016-2017. More information, including the list of disease areas and a general schedule of meetings, is posted on FDA's Web site at <http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm326192.htm>.

##### II. Public Meeting Information

###### A. Purpose and Scope of the Meeting

As part of Patient-Focused Drug Development, FDA will obtain patient and patient stakeholder input on symptoms of fibromyalgia that matter most to patients and on current approaches to treating fibromyalgia. Fibromyalgia is a chronic disorder characterized by widespread musculoskeletal pain and tenderness in multiple tender points and may be accompanied by fatigue, sleep disturbances, irritable bowel syndrome, headache, and mood disorders. While there is currently no definitive cure, treatments for fibromyalgia include medications and lifestyle changes with emphasis on minimizing symptoms and improving general health and daily function. FDA is interested in obtaining a better understanding of fibromyalgia patients' perspectives on the severity of the disease and the available therapies used to treat fibromyalgia and its symptoms.

The questions that will be asked of patients and patient stakeholders at the meeting are listed in this section, organized by topic. For each topic, a brief patient panel discussion will begin the dialogue, followed by a facilitated discussion inviting comments from

other patient and patient stakeholder participants. In addition to input generated through this public meeting, FDA is interested in receiving patient input addressing these questions through written comments that can be submitted to the public docket (see **ADDRESSES**).

#### Topic 1: Disease Symptoms and Daily Impacts That Matter Most to Patients

(1) Of all the symptoms that you experience because of your condition, which 1–3 symptoms have the most significant impact on your life? (Examples may include chronic pain, fatigue, difficulty concentrating, sleep disorders, etc.)

(2) Are there specific activities that are important to you but that you cannot do at all or as fully as you would like because of your condition? (Examples of activities may include sleeping through the night, daily hygiene, driving, household chores, etc.)

(a) How do your symptoms and their negative impacts affect your daily life on the best days? On the worst days?

(3) How have your condition and its symptoms changed over time?

(a) Do your symptoms come and go? If so, do you know of anything that makes your symptoms better? Worse?

(4) What worries you most about your condition?

#### Topic 2: Patients' Perspectives on Current Approaches to Treating Fibromyalgia

(1) What are you currently doing to help treat your condition or its symptoms? (Examples may include prescription medicines, over-the-counter products, and other therapies including non-drug therapies such as exercise or acupuncture)

(a) What specific symptoms do your treatments address?

(b) How has your treatment regimen changed over time, and why?

(2) How well does your current treatment regimen treat the most significant symptoms of your disease?

(a) How well do these treatments improve your ability to do specific activities that are important to you in your daily life?

(b) How well have these treatments worked for you as your condition has changed over time?

(3) What are the most significant downsides to your current treatments, and how do they affect your daily life? (Examples of downsides may include bothersome side effects, going to the hospital for treatment, restrictions on driving, etc.)

(4) What specific things would you look for in an ideal treatment for your condition?

#### B. Meeting Attendance and/or Participation

If you wish to attend this meeting, visit <https://patientfocusedfibromyalgia.eventbrite.com>. Please register by November 27, 2013. Those who are unable to attend the meeting in person can register to view a live webcast of the meeting. You will be asked to indicate in your registration whether you plan to attend in person or via the webcast. Your registration should also contain your complete contact information, including name, title, affiliation, address, email address, and phone number.

Seating will be limited, so early registration is recommended. Registration is free and will be on a first-come, first-served basis. However, FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the meeting will be based on space availability. If you need special accommodations because of disability, please contact Graham Thompson (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the meeting.

Patients who are interested in presenting comments as part of the initial panel discussions will be asked to indicate in their registration which topic(s) they wish to address. These patients will also be asked to send a brief summary of responses to the topic questions to [PatientFocused@fda.hhs.gov](mailto:PatientFocused@fda.hhs.gov). Panelists will be notified of their selection soon after the close of registration on November 27, 2013. FDA will try to accommodate all patients and patient stakeholders who wish to speak, either through the panel discussion or audience participation; however, the duration of comments may be limited by time constraints.

Interested members of the public, including those who attend the meeting in person or through the webcast, are invited to provide electronic or written responses to the questions pertaining to Topics 1 and 2 to the public docket (see **ADDRESSES**). Comments may be submitted until February 10, 2013.

Dated: September 17, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–23019 Filed 9–20–13; 8:45 am]

**BILLING CODE 4160–01–P**

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Food and Drug Administration

[Docket No. FDA–2013–N–0001]

#### Advisory Committee for Pharmaceutical Science and Clinical Pharmacology; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Advisory Committee for Pharmaceutical Science and Clinical Pharmacology.

*General Function of the Committee:* To provide advice and recommendations to the Agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on October 30, 2013, from 8 a.m. to 5 p.m.

*Location:* FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: <http://www.fda.gov/AdvisoryCommittees/default.htm>; under the heading “Resources for You,” click on “Public Meetings at the FDA White Oak Campus.” Please note that visitors to the White Oak Campus must enter through Building 1.

*Contact Person:* Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: [ACPS-CP@fda.hhs.gov](mailto:ACPS-CP@fda.hhs.gov), or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at <http://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

*Agenda:* There will be two topics presented to the committee for their

discussion and consideration. During the first session, the Office of Pharmaceutical Science and the Office of Compliance will discuss with the committee the use of statistical methods for the evaluation of pharmaceutical product quality. The committee will receive presentations from the Agency on the need for objective metrics of product quality and some of the available statistical methods used by other industries in their quality assurance programs. Representatives from the pharmaceutical industry will provide the manufacturers' perspective.

During the second session, the committee will receive an update and status on research activities within the Office of Pharmaceutical Science supporting regulatory decision making. There will be presentations from the Office of Generic Drugs, the Office of Testing and Research, and the Office of Biotechnology Products. This will be an awareness topic and there will not be formal committee discussion or recommendation.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link.

**Procedure:** Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 16, 2013. Oral presentations from the public will be scheduled between approximately 11:15 a.m. to 12:15 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 7, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public

hearing session. The contact person will notify interested persons regarding their request to speak by October 8, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kalyani Bhatt at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 17, 2013.

**Jill Hartzler Warner,**

*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2013-23021 Filed 9-20-13; 8:45 am]

**BILLING CODE 4160-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2013-N-0001]

#### Advisory Committee for Pharmaceutical Science and Clinical Pharmacology; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

**Name of Committee:** Advisory Committee for Pharmaceutical Science and Clinical Pharmacology.

**General Function of the Committee:** To provide advice and recommendations to the Agency on FDA's regulatory issues.

**Date and Time:** The meeting will be held on October 31, 2013, from 8 a.m. to 5 p.m.

**Location:** FDA White Oak Campus, Building 31, the Great Room, White Oak Conference Center (Rm. 1503), 10903 New Hampshire Ave., Silver Spring, MD

20993-0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at:

<http://www.fda.gov/AdvisoryCommittees/default.htm>; under the heading "Resources for You," click on "Public Meetings at the FDA White Oak Campus." Please note that visitors to the White Oak Campus must enter through Building 1.

**Contact Person:** Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993-0002, 301-796-9001, FAX: 301-847-8533, email: [ACPS-CP@fda.hhs.gov](mailto:ACPS-CP@fda.hhs.gov), or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at <http://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

**Agenda:** There will be two topics presented to the committee for their discussion and consideration. During the first session, the Office of New Drug Quality Assessment will lead a discussion on the challenges and opportunities of continuous manufacturing for pharmaceutical products. Speakers from the Agency, academia, and industry will provide their thoughts on scientific and regulatory challenges for implementing continuous processes for drug substance and drug product manufacturing.

During the second session, the committee will receive an informational only update from the Office of Generic Drugs on what Agency actions/changes have taken place following previous discussions with the committee pertaining to quality and bioequivalence concerns for narrow therapeutic index drug products. This will be an awareness topic and there will not be formal committee discussion or recommendation.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee

meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link.

**Procedure:** Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 16, 2013. Oral presentations from the public will be scheduled between approximately 10:45 a.m. to 11:45 a.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 7, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 8, 2013.

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Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 16, 2013.

**Jill Hartzler Warner,**  
*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2013-23022 Filed 9-20-13; 8:45 am]

**BILLING CODE 4160-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2013-N-1073]

#### Complex Issues in Developing Medical Devices for Pediatric Patients Affected by Rare Diseases; Public Workshop; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing the following public workshop entitled "Complex Issues in Developing Medical Devices for Pediatric Patients Affected by Rare Diseases." This public workshop is organized by the Center for Devices and Radiological Health (CDRH) and the Office of Orphan Products Development (OOPD) and is being held in conjunction with the Center for Drug Evaluation and Research's workshop entitled "Complex Issues in Developing Drug and Biological Products for Rare Diseases." The purpose of the public workshop is to discuss issues related to the following broad topics associated with medical devices for the diagnosis and treatment of pediatric patients affected by rare diseases: Current approaches toward use of medical devices for pediatric clinical practice; Humanitarian Device Exemption (HDE) marketing pathway, including the Humanitarian Use Device (HUD) designation process; Pediatric Specialty-Specific Practice Areas; Clinical Trials and Registries; and Pediatric Needs Assessment and Possible Approaches to Advancing Pediatric Medical Device Development. FDA is seeking input into these topics from academicians, clinical practitioners, patients and advocacy groups, industry, and governmental agencies. The input from this public workshop will help in developing a strategic plan to encourage and accelerate the development of new medical devices and therapies for pediatric patients affected by rare diseases. This is part of an ongoing effort by FDA to address the needs of pediatric patients affected by rare diseases.

**Date and Time:** The workshop will be held on January 8, 2014, from 8 a.m. to 5 p.m. This public workshop is being held in conjunction with FDA's public workshop entitled "Complex Issues in Developing Drug and Biological Products for Rare Diseases" which will be held on January 6, 2014, from 8 a.m.

to 5 p.m. and on January 7, 2014, from 8 a.m. to 4:45 p.m.

**Location:** The public workshop will be held at FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (section A of Rm. 1503), Silver Spring, MD 20993-0002. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to <http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm>.

**Contact Person:** Carol Krueger, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3663, Silver Spring, MD 20993-0002, 301-796-3241, [Carol.Krueger@fda.hhs.gov](mailto:Carol.Krueger@fda.hhs.gov).

**Registration:** Registration is free and available on a first-come, first-served basis. Persons interested in attending the Complex Issues in Developing Medical Devices for Pediatric Patients Affected by Rare Diseases public workshop must register online by December 6, 2013, 5 p.m. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permit, onsite registration on the day of the public workshop will be provided beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact Susan Monahan (email: [Susan.Monahan@fda.hhs.gov](mailto:Susan.Monahan@fda.hhs.gov) or phone: 301-796-5661) no later than December 27, 2013.

To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at <http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm>. (Select this public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number. Those without Internet access should contact Carol Krueger to register (see *Contact Person*). Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

**Streaming Webcast of the Public Workshop:** This public workshop will also be Webcast. Persons interested in viewing the Webcast must register online by December 6, 2013, 5 p.m. Early registration is recommended because Webcast connections are limited. Organizations are requested to

register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after January 1, 2014. If you have never attended a Connect Pro event before, test your connection at [https://collaboration.fda.gov/common/help/en/support/meeting\\_test.htm](https://collaboration.fda.gov/common/help/en/support/meeting_test.htm). To get a quick overview of the Connect Pro program, visit [http://www.adobe.com/go/connectpro\\_overview](http://www.adobe.com/go/connectpro_overview). (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

**Comments:** FDA is holding this public workshop in response to section 510 of the Food and Drug Safety and Innovation Act to discuss ways to encourage and accelerate the development of new medical devices and therapies for pediatric rare diseases. In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of the public workshop topics. The deadline for submitting comments regarding this public workshop is February 5, 2014.

Regardless of attendance at the public workshop, interested persons may submit either electronic comments regarding this document to <http://www.regulations.gov> or written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville MD 20852. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific topics as outlined in section II of this document, please identify the topic you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <http://www.regulations.gov>.

**Transcripts:** Please be advised that as soon as a transcript is available, it will be accessible at <http://www.regulations.gov>. It may be viewed at the Division of Dockets Management (see **Comments**). A transcript will also be available in either hardcopy or on CD-ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM-1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will also be available

approximately 45 days after the public workshop on the Internet at <http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm>. (Select this public workshop from the posted events list).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The demand by health care professionals and consumers for safe and effective medical devices for use for pediatric patients affected by rare diseases continues to steadily increase. To meet that demand, clinicians and organizations representing patients and physicians have cited the widespread practice of modifying adult devices for pediatric use. Certain adult medical devices may be inappropriate for pediatric use due to a variety of factors, including patient size, growth, and development, or may require design changes or special labeling for pediatric use.<sup>1</sup>

OOPD was established to promote the development of products (drugs, biologics, medical devices, or medical foods) that demonstrate promise for the diagnosis, prevention, and/or treatment of rare diseases or conditions. One of OOPD's functions is to designate devices as HUDs, which allows them to be eligible for marketing approval under an HDE application. The HDE pathway, authorized under section 520(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(m)), provides an alternative pathway to market devices intended to treat or diagnose a disease or condition that affects fewer than 4,000 individuals in the United States per year. Roughly a quarter of the medical devices that have received HDE marketing approval are available for pediatric patients.

In 2007, Congress passed the Pediatric Medical Device Safety and Improvement Act (the Act). The Act addresses pediatric device needs by allowing sponsors of pediatric HUDs to make a profit on sales of those devices; explicitly permitting extrapolation of adult effectiveness data to support a pediatric indication or extrapolation of pediatric subpopulation effectiveness data to support an indication for another pediatric subpopulation based on a similar course of the disease or condition or a similar effect of the device; and providing grants to pediatric device consortia that provide technical

support and assistance to pediatric device innovators.

FDA is committed to supporting the development and availability of safe and effective medical devices for pediatric patients affected by rare diseases. The Agency has sponsored a number of workshops on issues relevant to pediatric device development in recent years.

##### **II. Topics for Discussion at the Public Workshop**

FDA seeks to address and receive comments on the following topics:

###### **A. Current Clinical Practice**

1. The current use and practice trends of medical devices in rare disease pediatric populations. For example, how much off-label use occurs? How much modification and adaptation of existing adult devices occurs?

2. What risks or adverse outcomes have been reported in association with off-label use of medical devices in rare disease pediatric populations?

###### **B. HUD/HDE**

1. Is there any confusion about the designation process for HUDs or the application process for HDE's? Where have barriers been encountered in the HDE marketing pathway, and how can they be mitigated? Please provide examples of any specific issues, how frequently they occur and suggestions to constructively address these barriers.

2. Please comment on Institutional Review Board issues that arise for HDEs that are indicated for pediatric rare diseases.

###### **C. Specialty Practice Areas**

1. For specialty practices areas (e.g. cardiology, orthopedics, and neurology) what existing medical devices appear to have the best potential for modification for rare diseases that affect the pediatric population? If possible, please prioritize existing medical devices in terms of *minimal change*, *moderate change*, or *significant change* required. Also state whether no medical device is currently available to address the need.

2. What are the best ways to foster efficient networking across agencies, academia, professional societies, and patient groups to address the medical device needs of pediatric patients with rare diseases?

###### **D. Clinical Trials**

1. What are the most challenging barriers in the process of designing protocols for devices used to treat/diagnose rare pediatric diseases?

2. What are unique challenges in identifying appropriate endpoints for

<sup>1</sup> "Pre-market Assessment of Pediatric Medical Devices." Issued May 14, 2004. This guidance may be found on FDA's Web site at [www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM089742.pdf](http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM089742.pdf).

protocols for devices used to treat/diagnose rare pediatric diseases?

3. What barriers related to statistical analyses must be addressed in order to promote device development for rare pediatric diseases?

4. How can new registries be developed or current registries be leveraged to provide robust data on the safety and effectiveness of pediatric medical devices to support premarket approval and clearance, and/or enhance postmarket surveillance activities related to pediatric medical devices?

#### *E. Pediatric Needs Assessment*

1. Describe the parameters that should be used in determining priority areas of development of devices, including both therapeutic and diagnostic devices, in pediatric rare diseases.

2. What is the best approach to conduct needs assessment of medical devices required for use with pediatric rare diseases?

#### *F. Device Related Issues for Diagnostic Devices*

1. What are medical device related issues that need to be addressed for development of diagnostic medical devices?

#### *G. Advancing Development*

1. What incentives could help advance the development of diagnostic and therapeutic medical devices to treat pediatric rare diseases?

2. How can possible or probable use in pediatric practice be considered early in the development stages of all devices designed to treat a rare disease or condition?

3. What are potential private resources (e.g., registries, industry, or patient advocacy groups) that could be tapped to advance the development of medical devices for rare diseases in the pediatric population?

4. What are potential improvements or changes that can be made to FDA guidance, regulations, or current science in order to help develop and improve medical devices to address the needs of the pediatric population affected by rare diseases?

Dated: September 17, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013-22960 Filed 9-20-13; 8:45 am]

**BILLING CODE 4160-01-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Food and Drug Administration**

**[Docket No. FDA-2013-N-0001]**

#### **Clinical Trial Design for Intravenous Fat Emulsion Products; Public Workshop**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop.

The Food and Drug Administration's (FDA) Center for Drug Evaluation and Research, in cosponsorship with the American Society for Parenteral and Enteral Nutrition, is announcing a 1-day public workshop entitled "Clinical Trial Design for Intravenous Fat Emulsion Products." This workshop will provide a forum to discuss trial design of clinical trials intended to support registration of intravenous fat emulsion products.

**Date and Time:** The public workshop will be held on October 29, 2013, from 8 a.m. to 5 p.m. (EST).

**Location:** The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503A), Silver Spring, MD 20993-0002.

**Contact Person:** Wes Ishihara, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 301-796-0069, FAX: 301-796-9904, email: [richard.ishihara@fda.hhs.gov](mailto:richard.ishihara@fda.hhs.gov).

**Registration:** There is no fee to attend the public workshop, but attendees must register in advance. Space is limited, and registration will be on a first-come, first-served basis. Persons interested in attending this workshop must register online at [https://netforum.avectra.com/eweb/DynamicPage.aspx?Site=ASPEN&WebCode=EventDetail&evt\\_key=eb9c4068-8b66-4ac0-ae4f-ac266c08e33e](https://netforum.avectra.com/eweb/DynamicPage.aspx?Site=ASPEN&WebCode=EventDetail&evt_key=eb9c4068-8b66-4ac0-ae4f-ac266c08e33e) before October 22, 2013. For those without Internet access, please contact Wes Ishihara (see *Contact Person*) to register. On-site registration will not be available.

If you need special accommodations because of disability, please contact Wes Ishihara (see *Contact Person*) at least 7 days in advance.

**SUPPLEMENTARY INFORMATION:** This workshop will provide a forum to discuss the key issues in clinical trial design for intravenous fat emulsions. Stakeholders, including industry sponsors, academia, patients receiving parenteral nutrition, and FDA, will discuss challenging issues related to

selection of endpoints and assessment methodologies in registration trials. Trial design strategies and possible candidates for endpoints will be explored.

**Transcripts:** Transcripts of the workshop will be available for review at the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and on the Internet at <http://www.regulations.gov> approximately 30 days after the workshop. A transcript will also be available in either hard copy or on CD-ROM, after submission of a Freedom of Information request. Send written requests to the Division of Freedom of Information (ELEM-1029), Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857. Send faxed requests to 301-827-9267.

Dated: September 17, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013-23020 Filed 9-20-13; 8:45 am]

**BILLING CODE 4160-01-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **National Institutes of Health**

#### **Submission for OMB Review; 30-day Comment Request: The Framingham Heart Study (FHS)**

**SUMMARY:** Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 7, 2013, pages 26639-41 and allowed 60-days for public comment. No public comments were received. The National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**Direct Comments to OMB:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) or by fax to 202-395-6974, Attention: NIH Desk Officer.

*Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of data collection plans and instruments, contact Dr. Gina Wei, Division of Cardiovascular Sciences, NHLBI, NIH, Two Rockledge Center, 6701 Rockledge Drive, MSC 7936, Bethesda, MD, 20892-7936, or call non-toll-free number (301) 435-0416, or email your request, including your address to: [weig@nhlbi.nih.gov](mailto:weig@nhlbi.nih.gov). Formal requests for additional plans and instruments must be requested in writing.

*Proposed Collection:* The Framingham Heart Study, 0925-0216, Revision National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH).

*Need and Use of Information Collection:* The Framingham Heart Study will continue to conduct morbidity and mortality follow-up, as well as examinations, for the purpose of studying the determinants of cardiovascular disease. Morbidity and mortality follow-up will continue to occur in all of the cohorts (Original, Offspring, Third Generation, Omni Group 1, and Omni Group 2). Examinations will continue to be conducted on the Original, Offspring, and Omni Group 1 Cohorts. The

numbers of Offspring and Omni Group 1 participants to be examined for this OMB submission are much smaller than those during the last OMB approval period. This is because a great majority of these two cohorts have already completed their examinations. The small number of participants remaining to be examined is reflected in the decrease in the estimated annualized burden hours for these two cohorts as well as for the entire study, compared to the last OMB approval period.

OMB approval is requested for 3 years. There is no cost to the respondents other than their time. The total estimated annualized burden hours are 4264.

#### ESTIMATED ANNUALIZED BURDEN HOURS, ORIGINAL COHORT

| Type of respondent  | Number of respondents | Number of responses per respondent | Average time per response (in hours) | Total annual burden hour |
|---|-----------------------|------------------------------------|--------------------------------------|--------------------------|
| <b>I. PARTICIPANT COMPONENTS</b>                                  |                       |                                    |                                      |                          |
| A. PRE-EXAM:  |                       |                                    |                                      |                          |
| a. Telephone contact to set up appointment .....                  | 60                    | 1                                  | 10/60                                | 10                       |
| b. Exam Appointment, Scheduling, Reminder, and Instructions ..... | 55                    | 1                                  | 35/60                                | 32                       |
| B. EXAM—Cycle 32:   |                       |                                    |                                      |                          |
| a. Clinic exam .....  | 25                    | 1                                  | 45/60                                | 19                       |
| b. Home or nursing home visit .....                               | 25                    | 1                                  | 65/60                                | 27                       |
| C. ANNUAL FOLLOW-UP:  |                       |                                    |                                      |                          |
| a. Records Request .....  | 60                    | 1                                  | 15/60                                | 15                       |
| b. Health Status Update .....                                     | 45                    | 1                                  | 15/60                                | 11                       |
| SUB-TOTAL: PARTICIPANT COMPONENTS .....                           | *60                   | .....                              | .....                                | 114                      |
| <b>II. NON-PARTICIPANT COMPONENTS</b>                             |                       |                                    |                                      |                          |
| A. Informant Contact (Pre-exam and Annual Follow-up) .....        | 25                    | 1                                  | 10/60                                | 4                        |
| B. Records Request (Annual follow-up) .....                       | 50                    | 1                                  | 15/60                                | 13                       |
| SUB-TOTAL: NON-PARTICIPANT COMPONENTS .....                       | 75                    | .....                              | .....                                | 17                       |

\* Number of participants as reflected in Rows I.A.a and I.C.a. above

#### ESTIMATED ANNUALIZED BURDEN HOURS, OFFSPRING COHORT AND OMNI GROUP 1 COHORT

| Type of respondent   | Number of respondents | Number of responses per respondent | Average time per response (in hours) | Total annual burden hour |
|--|-----------------------|------------------------------------|--------------------------------------|--------------------------|
| <b>I. PARTICIPANT COMPONENTS</b>                                 |                       |                                    |                                      |                          |
| A. PRE-EXAM:   |                       |                                    |                                      |                          |
| a. Telephone contact to set up apt or Health status update ..... | 300                   | 1                                  | 10/60                                | 50                       |
| b. Appt. or update Confirmation .....                            | 250                   | 1                                  | 10/60                                | 42                       |
| c. Food Frequency Form .....                                     | 250                   | 1                                  | 10/60                                | 42                       |
| B. EXAM:   |                       |                                    |                                      |                          |
| a. Clinic Exam .....   | 100                   | 1                                  | 175/60                               | 292                      |
| b. Home or nursing home visit .....                              | 100                   | 1                                  | 60/60                                | 100                      |
| c. Consent Forms .....   | 200                   | 1                                  | 20/60                                | 67                       |
| C. ANNUAL FOLLOW-UP:   |                       |                                    |                                      |                          |
| a. Records Request .....   | 2292                  | 1                                  | 15/60                                | 573                      |
| b. Health Status Update .....                                    | 1833                  | 1                                  | 15/60                                | 458                      |
| SUB-TOTAL: PARTICIPANT COMPONENTS .....                          | *2292                 | .....                              | .....                                | 1624                     |
| <b>II. NON-PARTICIPANT COMPONENTS</b>                            |                       |                                    |                                      |                          |
| A. Informant contact (Pre-exam and Annual Follow-up) .....       | 229                   | 1                                  | 10/60                                | 38                       |
| B. Records Request (Annual follow-up) .....                      | 2292                  | 1                                  | 15/60                                | 573                      |
| SUB-TOTAL: NON-PARTICIPANT COMPONENTS .....                      | 2521                  | .....                              | .....                                | 611                      |

\* Number of participants as reflected in Rows I.C.a. above.

## ESTIMATED ANNUALIZED BURDEN HOURS, GENERATION 3 COHORT AND OMNI GROUP 2 COHORT

| Type of respondent                                     | Number of respondents | Number of responses per respondent | Average time per response (in hours) | Total annual burden hour |
|--|-----------------------|------------------------------------|--------------------------------------|--------------------------|
| <b>I. PARTICIPANT COMPONENTS—ANNUAL FOLLOW-UP</b>      |                       |                                    |                                      |                          |
| A. Records Request .....                               | 3212                  | 1                                  | 15/60                                | 803                      |
| B. Health Status Update .....                          | 3212                  | 1                                  | 15/60                                | 803                      |
| SUB-TOTAL: PARTICIPANT COMPONENTS .....                | * 3212                | .....                              | .....                                | 1606                     |
| <b>II. NON-PARTICIPANT COMPONENTS—ANNUAL FOLLOW-UP</b> |                       |                                    |                                      |                          |
| A. Informant contacts .....                            | 160                   | 1                                  | 10/60                                | 27                       |
| B. Records Request .....                               | 1060                  | 1                                  | 15/60                                | 265                      |
| SUB-TOTAL: NON-PARTICIPANT COMPONENTS .....            | 1220                  | .....                              | .....                                | 292                      |

\* Number of participants as reflected in Rows I.A. and I.B. above.

## SUMMARY OF 3 TABLES COMBINED—TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent     | Number of respondents | Number of responses per respondent | Average time per response (in hours) | Total annual burden hour |
|------------------------|-----------------------|------------------------------------|--------------------------------------|--------------------------|
| Participants .....     | 5564                  | 1                                  | 36/60                                | 3344                     |
| Non-Participants ..... | 3816                  | 1                                  | 14.5/60                              | 920                      |
| Totals .....           | 9380                  | .....                              | .....                                | 4264                     |

(NOTE: reported and calculated numbers differ slightly due to rounding.)

**Lynn Susulsk,**

*NHLBI Project Clearance Liaison, National Institutes of Health.*

**Michael Lauer,**

*Director, DCVS, National Institutes of Health.*

[FR Doc. 2013–23060 Filed 9–20–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 USC, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel GOMED: Grand Opportunity in Medications Development for Substance-Related Disorders (U01).

*Date:* October 15, 2013.

*Time:* 9:00 a.m. to 11:00 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Garden Inn Washington, DC/ Bethesda, 7301 Waverly Street, Bethesda, MD 21045.

*Contact Person:* Jose F. Ruiz, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, Room 4228, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, (301) 451–3086, [ruizjf@nida.nih.gov](mailto:ruizjf@nida.nih.gov).

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel Strategic Alliances for Medications Development to Treat Substance Use Disorders (R01) (PAS–12–122).

*Date:* October 15, 2013.

*Time:* 11:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Garden Inn Washington, DC/ Bethesda, 7301 Waverly Street, Bethesda, MD 21045.

*Contact Person:* Jose F. Ruiz, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, Room 4228, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, (301) 451–3086, [ruizjf@nida.nih.gov](mailto:ruizjf@nida.nih.gov).

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; Medications Development Centers of Excellence Cooperative Program.

*Date:* October 15–16, 2013.

*Time:* 2:00 p.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Garden Inn Washington, DC/ Bethesda, 7301 Waverly Street, Bethesda, MD 21045.

*Contact Person:* Jose F. Ruiz, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on

Drug Abuse, NIH, Room 4228, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, (301) 451–3086, [ruizjf@nida.nih.gov](mailto:ruizjf@nida.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

*Dated:* September 17, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–22992 Filed 9–20–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Arthritis and Musculoskeletal and Skin Diseases Initial Review Group; Arthritis and Musculoskeletal and Skin Diseases Clinical Trials Review Committee.

*Date:* October 15–16, 2013.

*Time:* 8:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* Charles H Washabaugh, Ph.D., Scientific Review Officer, Scientific Review Branch, NIAMS/NIH, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892, 301–594–4952, [washabac@mail.nih.gov](mailto:washabac@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 17, 2013.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–22981 Filed 9–20–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Advisory Council.

*Date:* October 22, 2013.

*Open:* 8:00 a.m. to 1:00 p.m.

*Agenda:* To discuss program policies and issues.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

*Closed:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Stephen C. Mockrin, Ph.D., Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7100, Bethesda, MD 20892, (301) 435–0260, [mockrins@nhlbi.nih.gov](mailto:mockrins@nhlbi.nih.gov).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: [www.nhlbi.nih.gov/meetings/nhlbiac/index.htm](http://www.nhlbi.nih.gov/meetings/nhlbiac/index.htm), where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 17, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–22985 Filed 9–20–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel NCI, Omnibus Cancer Imaging.

*Date:* October 23, 2013.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 3W034, Rockville, MD 20850, (Telephone Conference Call).

*Contact Person:* Thomas A. Winters, Ph.D., Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, 9609 Medical Center Drive, Room 7W412, National Cancer Institute, NIH, Bethesda, MD 20892–9750, 240–276–6386, [twinters@mail.nih.gov](mailto:twinters@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Cancer Management, Epidemiology, and Health Behavior Meeting.

*Date:* October 29–30, 2013.

*Time:* 8:30 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Ellen K Schwartz, EDD, MBA, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W264, Bethesda, MD 20892–8329, 240–276–6384, [schwarel@mail.nih.gov](mailto:schwarel@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel, R13 Applications.

*Date:* October 30, 2013.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W556, Rockville, MD 20850, (Telephone Conference Call).

*Contact Person:* Bratin K. Saha, Ph.D., Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W556, Rockville, MD 20850, 240–276–6411, [sahab@mail.nih.gov](mailto:sahab@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Provocative Questions: Cancer Therapy & Outcomes.

*Date:* November 7–8, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

*Contact Person:* Eun Ah Cho, Ph.D., Scientific Review Officer, Special Review

and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W106, Bethesda, MD 20892-9750, 240-276-6342, [choe@mail.nih.gov](mailto:choe@mail.nih.gov).

Information is also available on the Institute's/Center's home page: <http://deainfo.nci.nih.gov/advisory/sep/sep.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 17, 2013.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-22986 Filed 9-20-13; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, November 06, 2013, 06:30 p.m. to November 07, 2013, 04:00 p.m., Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852 which was published in the **Federal Register** on August 16, 2013, 78 FR 50065.

The meeting notice is amended to change the location from the Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852 to Crowne Plaza Washington DC/Rockville, 3 Research Court, Rockville, MD 20850. The meeting is closed to the public.

Dated: September 17, 2013.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-22990 Filed 9-20-13; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Digestive Diseases and Nutrition C Subcommittee.

*Date:* October 23-25, 2013.

*Open:* October 23, 2013, 6:00 p.m. to 6:30 p.m.

*Agenda:* To review policy and procedures.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Closed:* October 23, 2013, 6:30 p.m. to 9:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Closed:* October 24, 2013, 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Closed:* October 25, 2013, 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Robert Wellner, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 706, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, [rw175w@nih.gov](mailto:rw175w@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 17, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-22991 Filed 9-20-13; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases B Subcommittee, Microbiology & Infectious Diseases B Subcommittee (MID-B) October 2013.

*Date:* October 15, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Garden Inn, Montgomery Room, 7301 Waverly St., Bethesda, MD 20814.

*Contact Person:* Nancy Lewis Ernst, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-451-7383, [nancy.ernst@nih.gov](mailto:nancy.ernst@nih.gov).

*Name of Committee:* Allergy, Immunology, and Transplantation Research Committee, AITC October 2013.

*Date:* October 16, 2013.

*Time:* 10:00 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817.

*Contact Person:* Zhuqing Li, Ph.D., Scientific Review Officer, Scientific Review

Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892-7616, 301-402-9523, [zhuqing.li@nih.gov](mailto:zhuqing.li@nih.gov).

*Name of Committee:* Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases Research Committee, MID October 2013.

*Date:* October 22, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Residence Inn Bethesda, Calvert I & II, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Michelle M. Timmerman, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700B Rockledge Drive, MSC-7616, Bethesda, MD 20892-7616, 301-451-4573, [timmermanm@niaid.nih.gov](mailto:timmermanm@niaid.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 17, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-22984 Filed 9-20-13; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, October 17, 2013, 4:00 p.m. to October 18, 2013, 06:00 p.m., Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD, 20852 which was published in the **Federal Register** on August 16, 2013, 78 FR 50065.

The meeting notice is amended to change the start time from 4:00 p.m. to 5:00 p.m. The meeting is closed to the public.

Dated: September 17, 2013.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-22982 Filed 9-20-13; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, NIAID Investigator Initiated Program Project Applications (P01).

*Date:* October 15, 2013.

*Time:* 11:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Priti Mehrotra, Ph.D., Chief, Immunology Review Branch, Scientific Review Program, National Institutes of Health/NIAID, 6700B Rockledge Drive, Room 3138, Bethesda, MD 20892-7616, 301-435-9369, [pm158b@nih.gov](mailto:pm158b@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 17, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-22988 Filed 9-20-13; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Vascular and Hematology Integrated Review Group, Hemostasis and Thrombosis Study Section.

*Date:* October 16, 2013.

*Time:* 11:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Bukhtiar H. Shah, Ph.D., DVM, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 435-1233, [shahb@csr.nih.gov](mailto:shahb@csr.nih.gov).

*Name of Committee:* Population Sciences and Epidemiology Integrated Review Group Societal and Ethical Issues in Research Study Section.

*Date:* October 16, 2013.

*Time:* 12:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Karin F. Helmers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3144, MSC 7770, Bethesda, MD 20892, (301) 254-9975, [helmersk@csr.nih.gov](mailto:helmersk@csr.nih.gov).

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Synthetic and Biological Chemistry B Study Section.

*Date:* October 17, 2013.

*Time:* 8:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

*Contact Person:* Kathryn M. Koeller, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301-435-2681, [koellerk@csr.nih.gov](mailto:koellerk@csr.nih.gov).

*Name of Committee:* Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Cellular Aspects of Diabetes and Obesity Study Section.

*Date:* October 17, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

*Contact Person:* Robert Garofalo, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6156, MSC 7892, Bethesda, MD 20892, 301-435-1043, [garofalors@csr.nih.gov](mailto:garofalors@csr.nih.gov).

*Name of Committee:* Cell Biology Integrated Review Group, Membrane Biology and Protein Processing Study Section.

*Date:* October 17–18, 2013.

*Time:* 8:00 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

*Contact Person:* Janet M. Larkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301-806-2765, [larkinja@csr.nih.gov](mailto:larkinja@csr.nih.gov).

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function B Study Section.

*Date:* October 17, 2013.

*Time:* 8:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Amalfi Hotel, 20 West Kinzie Street, Chicago, IL 60654.

*Contact Person:* Raymond Jacobson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5858, MSC 7849, Bethesda, MD 20892, 301-996-7702, [jacobsonrh@csr.nih.gov](mailto:jacobsonrh@csr.nih.gov).

*Name of Committee:* Vascular and Hematology Integrated Review Group, Vascular Cell and Molecular Biology Study Section.

*Date:* October 17–18, 2013.

*Time:* 8:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel Washington, 1515 Rhode Island Ave NW., Washington, DC 20005.

*Contact Person:* Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435-1214, [pinkusl@csr.nih.gov](mailto:pinkusl@csr.nih.gov).

*Name of Committee:* Genes, Genomes, and Genetics Integrated Review Group, Genetic Variation and Evolution Study Section.

*Date:* October 17–18, 2013.

*Time:* 8:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

*Contact Person:* Ronald Adkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, 301-435-4511, [ronald.adkins@nih.gov](mailto:ronald.adkins@nih.gov).

*Name of Committee:* Oncology 1-Basic Translational Integrated Review Group, Tumor Progression and Metastasis Study Section.

*Date:* October 17–18, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites, 900 10th Street NW., Washington, DC.

*Contact Person:* Rolf Jakobi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7806, Bethesda, MD 20892, 301-495-1718, [jakobir@mail.nih.gov](mailto:jakobir@mail.nih.gov).

*Name of Committee:* Population Sciences and Epidemiology Integrated Review Group, Epidemiology of Cancer Study Section.

*Date:* October 17–18, 2013.

*Time:* 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

*Contact Person:* Denise Wiesch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7770, Bethesda, MD 20892, (301) 437-3478, [wieschd@csr.nih.gov](mailto:wieschd@csr.nih.gov).

*Name of Committee:* Immunology Integrated Review Group, Cellular and Molecular Immunology—B Study Section.

*Date:* October 17–18, 2013.

*Time:* 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Avenue Hotel Chicago, 160 E. Huron Street, Chicago, IL 60611.

*Contact Person:* Betty Hayden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301-435-1223, [haydenb@csr.nih.gov](mailto:haydenb@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 17, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013-22989 Filed 9-20-13; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR Panel: Physical Activity and Weight Control Interventions among Cancer Survivors: Effects on Biomarkers of Prognosis and Survival.

*Date:* October 11, 2013.

*Time:* 1:30 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Denise Wiesch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7770, Bethesda, MD 20892, (301) 437-3478, [wieschd@csr.nih.gov](mailto:wieschd@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Asthma, Immunology and Lung Host Defense.

*Date:* October 16–17, 2013.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Bradley Nuss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC7814, Bethesda, MD 20892, 301-451-8754, [nussb@csr.nih.gov](mailto:nussb@csr.nih.gov).

*Name of Committee:* Biobehavioral and Behavioral Processes Integrated Review Group; Child Psychopathology and Developmental Disabilities Study Section.

*Date:* October 17–18, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

*Contact Person:* Jane A. Doussard-Roosevelt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435-4445, [doussarj@csr.nih.gov](mailto:doussarj@csr.nih.gov).

*Name of Committee:* Biobehavioral and Behavioral Processes Integrated Review Group; Adult Psychopathology and Disorders of Aging Study Section.

*Date:* October 17–18, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* Serena Chu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 500-5829, [sechu@csr.nih.gov](mailto:sechu@csr.nih.gov).

*Name of Committee:* Brain Disorders and Clinical Neuroscience Integrated Review

Group; Clinical Neuroimmunology and Brain Tumors Study Section.

*Date:* October 17–18, 2013.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

*Contact Person:* Jay Joshi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 408–9135, [joshij@csr.nih.gov](mailto:joshij@csr.nih.gov).

*Name of Committee:* Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Musculoskeletal Tissue Engineering Study Section.

*Date:* October 17–18, 2013.

*Time:* 8:00 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Baljit S. Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, [moongabs@mail.nih.gov](mailto:moongabs@mail.nih.gov).

*Name of Committee:* Oncology 1-Basic Translational Integrated Review Group; Molecular Oncogenesis Study Section.

*Date:* October 17–18, 2013.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites Alexandria, 1900 Diagonal Road, Alexandria, VA.

*Contact Person:* Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718, [sizemoren@csr.nih.gov](mailto:sizemoren@csr.nih.gov).

*Name of Committee:* Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiac Contractility, Hypertrophy, and Failure Study Section.

*Date:* October 17, 2013.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

*Contact Person:* Olga A. Tjurmina, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4030B, MSC 7814, Bethesda, MD 20892, (301) 451–1375, [ot3d@nih.gov](mailto:ot3d@nih.gov).

*Name of Committee:* Risk, Prevention and Health Behavior Integrated Review Group; Social Psychology, Personality and Interpersonal Processes Study Section.

*Date:* October 17, 2013.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

*Contact Person:* Monica Basco, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3220, MSC 7808, Bethesda, MD 20892, 301–496–7010, [bascoma@mail.nih.gov](mailto:bascoma@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

*Dated:* September 17, 2013.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–22983 Filed 9–20–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Bariatric Surgery—Related Ancillary Studies (R01s).

*Date:* October 29, 2013.

*Time:* 1:00 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, [rushingp@extra.niddk.nih.gov](mailto:rushingp@extra.niddk.nih.gov).

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Regulatory Mechanisms in Intestinal Motility (P01).

*Date:* November 8, 2013.

*Time:* 2:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy

Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Paul A. Rushing, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, [rushingp@extra.niddk.nih.gov](mailto:rushingp@extra.niddk.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

*Dated:* September 17, 2013.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–22987 Filed 9–20–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

#### Project: SAMHSA Tobacco Prevention, Cessation, and Behavioral Health Message Testing—NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA) is conducting message testing to inform the development and implementation of a tobacco use prevention and cessation campaign aimed at youth with substance use and/or mental health conditions.

The purpose of the project is to inform messaging efforts, through focus groups with youth and in-depth interviews with health care providers, to improve tobacco use prevention and cessation efforts in populations with mental health and substance use concerns, particularly youth and vulnerable populations. The focus groups and interviews are an integral part of the process to test messages and, ultimately, develop effective campaign materials and efficient implementation plans.

SAMHSA will screen parents (because focus group participants are

under the age of consent) and youth, conduct focus groups with youth with substance use and/or mental health conditions, and interview health care professionals who treat youth with these conditions. The screen will be administered by telephone to parents first and, as eligible, to youth and will take 10 minutes to complete for parents and for youth. Questions will include a mix of open-ended and closed-ended responses and are intended to gather information on previous diagnosis and symptomology of mental health conditions and availability to participate in the focus group. The focus groups with youth will be conducted in

person and will take up to 90 minutes. Questions are primarily open-ended and intended to gather information on the reasons youth with substance use and/or mental health conditions use tobacco, the barriers and facilitators to tobacco use prevention and cessation, the appeal of various tobacco use prevention and cessation messages, and the best dissemination strategies and communication channels for a future campaign aimed at this specialized group. The interviews with health care professionals who treat youth with mental health and/or substance use conditions will be conducted in person, as feasible, or by telephone and will

take up to 45 minutes. Questions are primarily open-ended and intended to gather information to better understand how various health care professionals screen for and address tobacco use in youth receiving care in their practice, identify messages and materials aimed at health care professionals to address tobacco use prevention and cessation in youth with substance use and/or mental health conditions, determine the most efficient communication strategies and channels to disseminate this information. All data collections are voluntary.

Below is the table of the estimated total burden hours:

| Respondent               | Number of respondents | Responses per respondent | Average burden hour | Total hour burden |
|--------------------------|-----------------------|--------------------------|---------------------|-------------------|
| Screener (Parent) .....  | 576                   | 1                        | .15                 | 86.4              |
| Screener (Youth) .....   | 144                   | 1                        | .15                 | 21.6              |
| Youth Focus Group .....  | *108                  | 1                        | 1.50                | 162               |
| Provider Interview ..... | 42                    | 1                        | .75                 | 31.5              |
| Total .....              | 762                   | .....                    | .....               | 301.5             |

\*The 108 respondents identified for the youth focus groups are included in the 144 respondents for the youth screener.

Written comments and recommendations concerning the proposed information collection should be sent by October 23, 2013 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA\_Submission@omb.eop.gov*. Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202-395-7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

**Summer King,**  
Statistician.

[FR Doc. 2013-23053 Filed 9-20-13; 8:45 am]

**BILLING CODE 4162-20-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

#### Project: Fetal Alcohol Spectrum Disorders (FASD) Center for Excellence (CFE) Screening and Brief Intervention (SBI) Project and Project CHOICES Evaluation (OMB No. 0930-0302)—Reinstatement

Since 2001, SAMHSA's Center for Substance Abuse Prevention has been operating the SAMHSA Fetal Alcohol Spectrum Disorders (FASD) Center for Excellence (CFE). The purpose of the FASD Center for Excellence is to prevent alcohol-exposed pregnancies among women of childbearing age and pregnant women and to improve the quality of life for individuals affected by FASD. Data will be collected from women served across approximately 10 sites in local/community-based

agencies. Women will be screened for alcohol use, and provided appropriate interventions based on their pregnancy status.

The FASD CFE will be integrating Screening and Brief Intervention (SBI) for pregnant women and Project CHOICES for non-pregnant women through service delivery organizations and will monitor the results. Approximately 10 sites will implement the SBI program and/or Project CHOICES.

At baseline, an assessment form will be administered by the counselor to screen women at the participating sites or health care delivery programs. Basic demographic data will be collected for all women screened (age, race/ethnicity, education, and marital status) at baseline by participating sites but no personal identification information will be transmitted to SAMHSA. Both quantity and frequency of drinking will be assessed for all women. Pregnant women will be assessed for risk of alcohol use using the TWEAK screening instrument, which has been used successfully with pregnant women. Non-pregnant women will be assessed for ability to conceive and use of effective birth control.

SBI focuses on 10- to 15-minute counseling sessions, conducted by a counselor who will use a scripted manual to guide the program. Participants in SBI will be assessed throughout their pregnancy to monitor

alcohol use, referred for additional services to support their efforts to stop drinking, and will be provided with the 10–15 minute program until the client abstains from alcohol. Clients will be followed up until their 36th week of pregnancy. At each process visit, the quantity and frequency of drinking will be assessed and the client's goals for drinking will be recorded. In addition, process level variables will be assessed to understand how the program is being implemented (e.g., whether SBI was delivered; duration of the program; what referrals were made; client satisfaction). At the 36th week of pregnancy quantity and frequency of drinking will be assessed, and the client's satisfaction with the program will be recorded.

For those who screen positive for Project CHOICES (non-pregnant women 18–44 years who are at risk for an alcohol-exposed pregnancy), the program will provide two Motivational Interviewing (MI) sessions related to alcohol use, plus one contraceptive counseling session. The goal is to help these women prevent an alcohol-exposed pregnancy by abstaining from alcohol and using contraceptive methods of their choice consistently and correctly. At the end of the Project CHOICES program, women are assessed on their alcohol consumption and

contraceptive use in the past 30 days, and their satisfaction with the program is recorded. At 3 months and 6 months after the end of the program, women are assessed on 30-day alcohol consumption and contraceptive use using the same core assessment form that was used at baseline.

All participating sites will maintain personally identifiable information of their clients for service delivery purposes, but the sites will keep such information private to the maximum extent allowable by laws. Data will be collected at the site level and sites will be instructed to keep personal data secure in a specified location. To further ensure privacy of individual responses, all data will be reported at the aggregate level so that individual responses cannot be identified; no data will be reported at the individual participant level. Furthermore, data will be collected to meet the criteria of a "limited data set" as defined in the Privacy Regulations issued under the Health Insurance Portability and Accountability Act (HIPAA), (HIPAA Privacy Rule, 45 CFR 164.501) [45 CFR 164.514(e)(4)(ii)]. A computer generated coding system will be used to identify the records, and access to records will be limited only to authorized personnel. In addition, the identifiers will be stored

separately from the data. No direct identifiers will be included in order for the data to be considered a "limited data set." A summary of the actions the contractors will take in order to comply with HIPAA follows:

- Ensure that the personal health information respondents disclose to outside entities does not violate the Privacy Rule.
- When creating a unique identification code, ensure that the code does not contain information that can be used to identify the individual.
- Sign a data agreement that states all HIPAA requirements will be adhered to consistent with a limited data set.
- Agree to maintain the confidentiality of alcohol and drug abuse client records according to the provisions of Title 42 of the Code of Federal Regulations, Part II.

The data collection is designed to monitor the implementation of the proposed programs by measuring whether abstinence from alcohol is achieved, and for Project CHOICES by measuring whether effective birth control practices are performed. Furthermore, the program will include process measures to monitor how the interventions were provided.

#### ESTIMATED ANNUALIZED BURDEN HOURS

| Instrument/activity  | Number of respondents | Number of responses per respondent | Total number of responses | Average burden per response | Total burden hours per collection |
|--|-----------------------|------------------------------------|---------------------------|-----------------------------|-----------------------------------|
| <b>Pregnant Women (SBI)</b>  |                       |                                    |                           |                             |                                   |
| Baseline Assessment (Form A) .....                                   | 9,273                 | 1                                  | 9,273                     | .25                         | 2,318                             |
| Process Assessment for all Eligible women (Forms A and B) .....      | 2,468                 | 2                                  | 4,936                     | .21                         | 1,037                             |
| (26.6% of baseline)  |                       |                                    |                           |                             |                                   |
| Process Assessment for women actively drinking (Forms A and B) ..... | 395                   | 1                                  | 395                       | .21                         | 83                                |
| (16% of 2,468 eligible women)  |                       |                                    |                           |                             |                                   |
| End of Program Assessment (Forms A and C) .....                      | 1,234                 | 1                                  | 1,234                     | .16                         | 197                               |
| (50% of eligible women)  |                       |                                    |                           |                             |                                   |
| <b>SBI Sub Total</b> .....   | <b>9,273</b>          | <b>.....</b>                       | <b>15,838</b>             | <b>.....</b>                | <b>3,635</b>                      |
| <b>Non-Pregnant Women (Project CHOICES)</b>                          |                       |                                    |                           |                             |                                   |
| Baseline Assessment (Form A) .....                                   | 1,220                 | 1                                  | 1,220                     | .25                         | 305                               |
| End of program Assessment (Forms A and C) .....                      | 314                   | 1                                  | 314                       | .25                         | 79                                |
| (50% of 629 eligible women)  |                       |                                    |                           |                             |                                   |
| Follow-up Assessment (Form A) .....                                  | 314                   | 2                                  | 628                       | .25                         | 157                               |
| (50% of 629 eligible women)  |                       |                                    |                           |                             |                                   |
| <b>Project CHOICES Sub Total</b> .....                               | <b>1,220</b>          | <b>.....</b>                       | <b>2,162</b>              | <b>.....</b>                | <b>541</b>                        |
| <b>Totals</b> .....  | <b>10,493</b>         | <b>.....</b>                       | <b>18,000</b>             | <b>.....</b>                | <b>4,176</b>                      |

Written comments and recommendations concerning the proposed information collection should

be sent by October 23, 2013 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs,

Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays

in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov). Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202-395-7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,  
Statistician.

[FR Doc. 2013-22958 Filed 9-20-13; 8:45 am]

BILLING CODE 4162-20-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2013-0499]

### Change-1 to Navigation and Inspection Circular 04-08

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Coast Guard announces the availability of Change-1 to Navigation and Vessel Inspection Circular 04-08, "Medical and Physical Evaluation Guidelines for Merchant Mariner Credentials" (NVIC 04-08). Change-1 to NVIC 04-08 contains a summary and clarification of Coast Guard policies regarding the criteria for granting medical waivers to merchant mariner credential applicants who have had either anti-tachycardia devices or implantable cardioverter defibrillators implanted, and to applicants who have had a seizure. This notice also addresses comments we received in response to Coast Guard notices published in the **Federal Register** on September 7, 2012, and March 25, 2013 soliciting public comments on these issues.

**DATES:** Change-1 to NVIC 04-08 is effective on September 23, 2013.

**ADDRESSES:** NVIC 04-08 is available in the docket and can be viewed by going to <http://www.regulations.gov> and using "USCG-2013-0499" as your search term. Locate this notice in the search results. NVIC 04-08 is available by clicking the "Supporting Documents" link. NVIC 04-08 is also available on the Coast Guard's Web site at: [www.uscg.mil/nmc](http://www.uscg.mil/nmc).

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Lieutenant Ashley Holm, Office

of Commercial Vessel Compliance (CG-CVC), 202-372-1128, email [MMCPolicy@uscg.mil](mailto:MMCPolicy@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

#### I. Background and Purpose

##### *General Waiver Criteria*

Coast Guard regulations in 46 CFR 10.215 contain the medical standards that merchant mariner applicants must meet prior to being issued a merchant mariner credential (MMC). In cases where the applicant does not meet the medical standards in 46 CFR 10.215, the Coast Guard may issue a waiver when extenuating circumstances exist that warrant special consideration (see 46 CFR 10.215(g)).

##### *Anti-Tachycardia Devices and Implantable Cardioverter Defibrillators*

Coast Guard guidance in NVIC 04-08 provides that anti-tachycardia devices and implantable cardioverter defibrillators (ICDs) are generally not waivable. Prior to issuing Change-1 to NVIC 04-08, Coast Guard guidance did not identify waiver criteria associated with anti-tachycardia devices or ICDs, rendering it difficult for Coast Guard personnel to consistently evaluate merchant mariner applicants with anti-tachycardia devices or ICDs, and assess whether an applicant's medical condition warranted granting a medical waiver under 46 CFR 10.215(g). Enclosure (7) to NVIC 04-08 now provides guidelines to use when assessing an applicant's eligibility for a waiver.

On September 7, 2012 we published a notice in the **Federal Register** requesting public comments on this issue (77 FR 55174). On December 17, 2012, we re-opened and extended the public comment period for an additional 30 days to provide additional opportunity to comment (77 FR 74630). We summarize the policy in Enclosure (7) to NVIC 04-08 and address the public comments below.

##### *Seizures*

Coast Guard regulations in 46 CFR 10.215(d) state that a convulsive disorder (i.e., seizure disorder) could lead to an applicant's disqualification from receiving a credential. Prior to issuing Change-1 to NVIC 04-08, Coast Guard guidance did not identify waiver criteria associated with applicants that had a history of seizures rendering it difficult for Coast Guard personnel to consistently evaluate merchant mariner

applicants with seizures and assess whether an applicant's medical condition warranted granting a medical waiver under 46 CFR 10.215(g). Enclosure (8) to NVIC 04-08 now provides guidelines to use when assessing an applicant's eligibility for a waiver.

On March 25, 2013 we published a notice in the **Federal Register** requesting public comments on this issue (78 FR 17917). We summarize the policies in Enclosure (8) to NVIC 04-08 and address the public comments below.

#### II. Discussion

##### *ICD Policy*

Prior to Change-1, NVIC 04-08 referred applicants to the Coast Guard's National Maritime Center (NMC) for guidance on the treatment of ICDs. ICDs were generally not waivable. Enclosure (7) provides a list of criteria to be considered when evaluating an application from a mariner with an ICD. While the policy remains that ICDs are generally not waivable, the criteria in Enclosure (7) will identify those limited situations where a waiver will be considered. The criteria that must be met to be considered for a waiver are:

(1) The applicant does not have a diagnosis of a cardiac channelopathy affecting the electrical conduction of the heart (to include Brugada syndrome, Long QT syndrome, etc.);

(2) The applicant does not have a prior history of ventricular fibrillation or episodes of sustained ventricular tachycardia within the last three years;

(3) The ICD or anti-tachycardia device was implanted more than three years ago;

(4) The ICD has not fired nor has the applicant required anti-tachycardia pacing therapy within the last three years;

(5) There are no additional risk factors for inappropriate shock such as uncontrolled atrial fibrillation;

(6) The applicant's left ventricular ejection fraction (EF)<sup>1</sup> is greater than 35% with a steady or improving trend;

(7) There is no history of any symptomatic or clinically significant heart failure in the past two years;

(8) There is no evidence of significant reversible ischemia on myocardial perfusion imaging exercise stress testing;

(9) The applicant's exercise capacity on formal stress testing (using standard

<sup>1</sup> The left ventricular ejection fraction measures the percentage of blood that the left ventricle of the heart is able to pump with each beat. A normal ejection fraction is greater than 50%.

Bruce Protocol)<sup>2</sup> is greater than or equal to 8 metabolic equivalents (METs);<sup>3</sup>

(10) The applicant's treating cardiologist or electrophysiologist provides a written assessment of the individual that supports a determination that the mariner is at low risk for future arrhythmia, adverse cardiac event or sudden incapacitation based upon objective testing and standard evaluation tools; and

(11) The applicant does not have any other medical conditions which may alone, or in combination with an ICD or anti-tachycardia device, pose an unacceptable risk for sudden incapacitation.

#### *Discussion of Public Comments on ICD Policy*

On September 7, 2012 we published a notice in the **Federal Register** requesting public comments on proposed ICD policy (77 FR 55174). We received approximately 37 comments on whether to grant waivers for anti-tachycardia devices or ICDs and the proposed criteria for such waivers. The majority of the comments were supportive of the proposed policy.

Many commenters referenced specific individuals that they argued were well qualified to hold a merchant mariner credential, despite having an ICD. Although this notice was not designed to render fitness determinations for specific individuals, the Coast Guard acknowledges that there may be some mariners with ICDs who warrant consideration for a medical waiver. The new policy clarification seeks to identify those limited situations where a waiver will be considered.

Several commenters felt that a requirement for applicants to reach 10 metabolic equivalents (METs) on a stress test using the standard Bruce Protocol was excessive. Instead, these commenters favored a standard of 8 METs, similar to the standard for other cardiac conditions addressed in NVIC 04-08. The Coast Guard proposed use of the 10 METs standard because it provides additional prognostic information over the 8 MET standard. Following review of the public

comments, however, the Coast Guard considered that, when combined with the stringency of all of the criteria required by the policy, the 8 METs standard provides sufficient prognostic information for evaluation. The Coast Guard, therefore, agrees with these commenters, and Change-1 incorporates 8 METs as the relevant standard.

Many commenters agreed with establishing waiver criteria, but they suggested that some of the proposed criteria were too restrictive (3 year exclusionary period, 10 METs, EF >40%, etc.). Several commenters expressed concern that the proposed checklist format was somewhat rigid, and that it over-simplified the process to a "go/no-go" decision that would not allow all factors to be considered. In response to these comments, we have determined that a relatively stringent set of criteria with respect to anti-tachycardia devices and ICDs is necessary because an underlying medical condition that warrants treatment with an ICD generally poses an unacceptable risk for sudden incapacitation. We developed the guidelines in Enclosure (7) to NVIC 04-08 for evaluating whether the underlying condition has improved significantly, and to help determine whether it no longer poses an inordinate risk. This allows for a margin of safety for individuals with ICDs who are seeking to work in a safety-sensitive position. The policy allows for an individual assessment, and, under exceptional circumstances, applicants who do not meet all of the criteria may be eligible for a waiver if they can demonstrate to the satisfaction of the Coast Guard that there is not an inordinate risk. We will continue to assess whether this policy strikes the proper balance between public safety and an individual's interest in holding a merchant mariner credential.

Many commenters favored a case-by-case or individualized assessment of the applicant's condition; as opposed to a blanket denial for all applicants with ICDs. We note that even prior to Change-1, NVIC 04-08 has included a case-by-case evaluation of the applicant's condition. We developed the criteria in Enclosure (7) to NVIC 04-08 in order to provide a framework for those evaluations.

Some commenters favored offering credential limitations, instead of denial, if the condition still posed some risk. We note that applicants who do not meet all of the outlined criteria in Enclosure (7) to NVIC 04-08 may be considered for a waiver if the Coast Guard is satisfied that the risk can be reduced to an acceptable level. This

may require limiting the scope of the applicant's credential to enforce certain working conditions that may reduce the risk of sudden incapacitation. When circumstances warrant, the Coast Guard will work with individual applicants to tailor restrictions and limitations appropriate to individual situations.

Many commenters felt that a cardiologist's assessment should be sufficient for determining whether the applicant's medical condition is safe enough to warrant granting a waiver. The Coast Guard disagrees. The Coast Guard wishes to emphasize that mariner credentials often enable individuals to work in safety-sensitive positions aboard vessels, which amplifies the risks and potential consequences of a condition requiring use of an ICD or anti-tachycardia device. Accordingly, the Coast Guard has determined that a mariner's self-evaluation, or even the evaluation of a physician, is not sufficient evidence that the ICD, anti-tachycardia device, or underlying condition pose no inordinate risk. While the Coast Guard gives the treating physician's evaluation great weight, it is not the sole factor to consider. Because the mariner's safety and public safety are at stake, the Coast Guard has determined it must also consider the objective criteria outlined in Enclosure 7 to NVIC 04-08 in making the final decision of whether to grant a mariner's credential.

Many commenters pointed out the risks to maritime safety posed by prohibiting service as a mariner solely on the basis of the mode of treatment (e.g., ICDs). These commenters felt that such a prohibition would lead mariners to choose to forego medical treatment out of fear of losing their jobs. This would pose a significant risk to both the mariner and the public. Several commenters stated that a mariner with a known, closely-managed medical condition and an ICD, is far safer for the public and maritime industry than a mariner not seeking care, with undiagnosed medical conditions. The Coast Guard shares these concerns, and we crafted Enclosure (7) to NVIC 04-08 to focus more on the underlying condition rather than the mere presence of an ICD.

We received 6 comments from people who identified themselves as physicians or representatives of a physician group. Two of these commenters opposed allowing waivers for mariners with ICDs, arguing that the ICD itself presents an inordinate risk, and that the underlying condition would pose an inordinate risk. The Coast Guard disagrees. While acknowledging that there may be some cases where the ICD

<sup>2</sup> The Bruce protocol is a diagnostic test used in the evaluation of cardiac function, developed by Robert A. Bruce. It is a treadmill exercise test with set stages to ensure standardized results. Each stage has a pre-set incline and speed. A stage is 3 minutes long.

<sup>3</sup> METs are a measure of physical work or exercise capacity. While there is no direct correlation, generally the physical ability guidelines in Enclosure (2) to NVIC 04-08 are similar to 6 METs. 8 METs are called for in the NVIC because the higher threshold results in better diagnostic and prognostic information. A mariner facing an emergency situation could likely be expected to have to function at least at 8 METs.

and the underlying condition pose an inordinate risk of sudden incapacitation, the Coast Guard has not found this to be true for all individuals. For these reasons, the Coast Guard disagrees with imposing a blanket exclusion of waivers for all individuals with ICDs. This policy allows for an individualized assessment of the mariner. The criteria outlined in Enclosure (7) to NVIC 04-08 are designed to distinguish those individuals whose underlying conditions have substantially improved and no longer pose an unacceptable risk of sudden incapacitation. Individuals with ICDs who meet the stringent criteria outlined in this policy, are at low enough risk to warrant consideration for a medical waiver, and a blanket exclusion would unnecessarily put mariners out of work.

One of these commenters expressed the concern that an inappropriate ICD discharge might result in sudden incapacitation. The Coast Guard recognizes this concern, but found other comments to be more persuasive. Specifically, cardiology experts commented on the low risk of inappropriate ICD discharge in this carefully selected population, and the ability to further mitigate such risk with selective device programming. Furthermore, these experts pointed out that with modern ICDs, the likelihood of an inappropriate ICD shock causing a sudden incapacitation is extremely small, and the benefits of having an ICD would outweigh any risk posed by the ICD in this setting.

Three of the other four physicians/physician groups agreed with establishing waiver criteria, but felt the proposed criteria were too restrictive (3 year exclusionary period, EF of 40%, 10 METs). The Coast Guard agrees in part. As noted above, we recognize that these criteria are strict, but necessary to demonstrate that individuals are at low enough risk to warrant consideration for a medical waiver. As discussed above, mariner credentials often enable individuals to work in safety-sensitive positions aboard vessels, which amplifies the risks and potential consequences of a condition requiring use of an ICD or anti-tachycardia device. Accordingly, the policy only grants waivers in those instances where the mariner's underlying condition has improved significantly such that it no longer poses an unacceptable risk of sudden incapacitation. Because the mariner's safety and public safety are at stake, the Coast Guard has chosen to maintain fairly stringent, objective criteria (to include requiring three years of clinical stability, recovery of the left

ventricular ejection fraction and normal exercise capacity) in making the final decision on whether to grant a mariner's credential. As noted above, though, the Coast Guard concedes that the ability to attain 8 METs of exercise capacity, and an EF of 35%, along with meeting all of the other criteria outlined in the policy, is sufficient to demonstrate low enough risk to warrant consideration for a medical waiver. Additionally, under exceptional circumstances, the policy allows for applicants who do not meet all of the criteria to be considered for a waiver if the risk of sudden incapacitation may be reduced.

#### *Seizure Policy*

Generally, the final policy in Change-1 to NVIC 04-08 distinguishes between provoked and unprovoked seizures. A summary of the waiver criteria for both types of seizures is provided below.

*Unprovoked seizures* are those seizures not precipitated by an identifiable trigger. Mariners with a history of unprovoked seizure(s) may be considered for a waiver as follows:

(1) Mariners with a history of epilepsy or seizure disorder may be considered for a waiver if the mariner has been seizure-free for a minimum of eight years (on or off anti-epileptic drugs (AEDs)); and

(a) If all AEDs have been stopped, the mariner must have been seizure-free for a minimum of eight years since cessation of medication; or

(b) If still using AEDs, the mariner must have been on a stable medication regimen for a minimum of two years.

(2) Mariners with a single unprovoked seizure may be considered for a waiver if the mariner has been seizure-free for a minimum of four years, off AEDs; and

(a) If all medication has been stopped, the mariner must have been seizure-free for a minimum of four years since cessation of medication; or

(b) If still requiring treatment with AEDs, the mariner's condition will be considered under the criteria for epilepsy listed above in (1) (i.e., the mariner may be considered for a waiver after they have been seizure-free for a minimum of 8 years, and on a stable medication regimen for a minimum of two years).

*Provoked seizures* are those seizures precipitated by an identifiable trigger. (This does not include epileptic seizures or seizures brought on by lack of sleep, stress, or photo-stimulation. Seizures of this nature will be evaluated under the criteria for unprovoked seizures listed above). Mariners with provoked seizures can be divided into those with low risk of recurrence and those with a higher

risk of recurrence (e.g., with a structural brain lesion).

(1) If a mariner is determined to be low-risk for seizure recurrence, does not require AEDs, and the precipitating factor is unlikely to recur, a waiver may be considered when the mariner has been seizure-free and off medication for a minimum of one year.

(2) Generally, mariners with one of the following precipitating factors will be considered low-risk for recurrence:

(a) Lidocaine-induced seizure during a dental appointment;

(b) Convulsive seizure, loss of consciousness  $\leq 30$  minutes with no penetrating injury;

(c) Seizure due to syncope not likely to recur;

(d) Seizure from an acute metabolic derangement not likely to recur;

(e) Severe dehydration;

(f) Hyperthermia; or

(g) Drug reaction or withdrawal.

(3) If a mariner is determined to be at higher risk for seizure recurrence, a waiver may be considered if the mariner has been seizure-free for a minimum of eight years (on or off AEDs); and

(a) If all medication has been stopped, the mariner must have been seizure-free for a minimum of eight years since cessation of medication; or

(b) If still using AEDs, the mariner must have been on a stable medication regimen for a minimum of two years.

(4) Generally, mariners with a history of provoked seizures caused by a structural brain lesion (e.g., tumor, trauma, or infection) characterized by one of the following precipitating factors will be considered at higher risk for recurrence:

(a) Head injury with loss of consciousness or amnesia  $\geq 30$  minutes or penetrating head injury;

(b) Intracerebral hemorrhage of any etiology, including stroke and trauma;

(c) Brain infection, such as encephalitis, meningitis, abscess, or cryptococcosis;

(d) Stroke;

(e) Intracranial hemorrhage;

(f) Post-operative brain surgery with significant brain hemorrhage; or

(g) Brain tumor.

(5) Under exceptional circumstances in which a mariner has had provoked seizures due to a benign brain lesion that has subsequently been removed, such individuals may be considered for a waiver once they have been seizure-free for a minimum of four years, provided that objective evidence supports extremely low risk of seizure recurrence.

#### *Public Comments on Seizure Policy*

On March 25, 2013 we published a notice in the **Federal Register**

requesting public comments on proposed policy regarding waivers for mariners with seizure disorders (78 FR 17917). We received 7 comments on the proposed policy for granting waivers for mariners with seizure disorders. The majority of commenters supported the proposed policy.

One commenter agreed with the proposed policy, noting that the criteria are strict, but appropriate when considered in light of the risks associated with a mariner having a seizure while in a safety-sensitive position aboard a ship.

Another commenter questioned whether it was appropriate for the Coast Guard to consider the guidelines and recommendations of the Federal Motor Carrier Safety Administration (FMCSA) Medical Review Board (MRB) and FMCSA's Medical Expert Panel regarding seizure disorders in automobile drivers when developing similar Coast Guard policy for mariners (see 78 FR 17918). The commenter suggested that mariners may need to undergo stricter evaluations than automobile drivers, such as evaluation by immersion in sea simulation and video electronystagmography to study their vestibular systems. The Coast Guard agrees that there may be special situations where certain mariners may require more extensive evaluation. NVIC 04-08 reflects that approach by giving the Coast Guard discretion to apply stricter standards on a case-by-case basis as needed. The Coast Guard disagrees that sea simulation and electronystagmography testing should be a blanket requirement for all mariners with seizure disorders. Neither the commenter nor the relevant medical literature provided a compelling rationale to justify such comprehensive vestibular testing for every mariner with a seizure disorder. Accordingly, the Coast Guard will determine whether an individual mariner requires extensive vestibular evaluation on a case-by-case basis, in consultation with the mariner's treating neurologist.

One commenter generally disagreed with the proposed policy, arguing that it was too strict. This commenter felt that it should be sufficient for mariners to demonstrate that their condition is under control and they are under the care of a doctor. The Coast Guard disagrees. As discussed above, mariner credentials often enable individuals to work in safety-sensitive positions aboard vessels, which amplifies the risks and potential consequences of a seizure disorder. Accordingly, the Coast Guard has determined that a mariner's self-evaluation, or even the evaluation of a physician, is not sufficient evidence

that a seizure disorder poses no inordinate risk. While the Coast Guard gives the treating physician's evaluation great weight, it is not the sole factor to consider. Because the mariner's safety and public safety are at stake, the Coast Guard has determined it must also consider the objective criteria described above in making the final decision of whether to grant a mariner's credential.

Notably, the Epilepsy Foundation provided comments in support of the proposed policy. The Epilepsy Foundation identifies itself as the leading voluntary health agency working on behalf of people with epilepsy. The Epilepsy Foundation applauded the Coast Guard's efforts to develop a policy that recognizes the potential for mariners with seizure disorders to work, while allowing for a case-by-case evaluation of the applicant's fitness. The Epilepsy Foundation also noted that epilepsy is a highly variable disorder, with varying levels of seizure control in different individuals. The Epilepsy Foundation pointed out that this variability makes it difficult to generalize about safety concerns and makes it inappropriate to enact blanket exclusionary rules and qualification standards that bar individuals with epilepsy. The Coast Guard agrees. Our policy has always included an individualized evaluation of the mariner's condition to determine fitness. We developed the criteria outlined in this policy to provide a framework within which to make these evaluations and to provide a margin of safety for individuals with seizure disorders who are seeking to work in a safety-sensitive position.

We also received 3 comments from individuals who self-identified as physicians or representatives of physician groups. All agreed with the decision to grant waivers for individuals with seizure disorders. One physician argued that the criteria are too restrictive because the required seizure-free time intervals are too long. The Coast Guard agrees that the criteria are stringent, but believes they are necessary to ensure the mariner's safety and public safety.

One of the physicians contended that the criteria are not strict enough. This physician expressed support for a 10-year seizure free time period for seizures, similar to that recommended for commercial drivers by the FMCSA's MRB. The Coast Guard disagrees. The aim of this policy is to distinguish those individuals who are no longer at inordinate risk of seizure recurrence. As part of the background research for determining a reasonable seizure-free time interval, the Coast Guard

considered the recommendations of the FMCSA's MRB, which uses a 10-year seizure-free requirement, as well as the recommendations of the FMCSA's 2007 Neurology Medical Expert Panel (MEP). The 2007 Neurology MEP asserted that individuals with certain types of seizures would be at low risk of seizure recurrence after 8 years or 4 years seizure-free. The Coast Guard found the recommendations of the 2007 MEP, which were based upon contemporary medical literature and research, to be more persuasive than the suggestion advocated by this commenter or the position of the FMCSA MRB. The 4-year and 8-year seizure-free time intervals allow sufficient time for individuals to demonstrate clinical stability and to distinguish those who are at lowest risk of seizure recurrence. Additionally, the Coast Guard notes that the FMCSA has recently announced its decision to utilize the recommendations of its 2007 MEP as the basis for evaluating commercial drivers with epilepsy. Those recommendations are similar to the criteria outlined in the Coast Guard's policy.

The third physician group, the American Epilepsy Society (AES), agreed with the policy as proposed. The AES acknowledged that the criteria are strict, but agreed that such criteria are necessary to address public safety concerns. The Coast Guard agrees and will continue to assess whether this policy strikes the proper balance between public safety and an individual's interest in holding a merchant mariner credential.

The AES, the Epilepsy Foundation, and one self-identified physician also provided responses to the seven questions that the Coast Guard posed in the March 25, 2013 **Federal Register** notice as follows:

(1) On the question of whether or not there is evidence that chronic use of anti-epileptic drugs (AEDs) impairs judgment and reaction time, both AES and the Epilepsy Foundation stated that AEDs used in appropriate dosages do not affect these functions or result in cumulative impairment. The other commenter noted that all AEDs have the potential to impair judgment, mood and motor skills, but recommended that this be considered on an individual basis, instead of drawing a blanket conclusion. The Coast Guard agrees. The policy does not impose a blanket disqualification for use of AEDs; instead it allows the Coast Guard to consider the treating neurologist's assessment of medication impairment when making a final determination.

(2) All three of these commenters stated that there is no evidence that

individuals who have been seizure-free and off AEDs for a period of time have a lower likelihood of seizure recurrence than individuals who have been apparently seizure-free and on stable AED dosing. The Coast Guard agrees. The policy allows for those individuals with seizure disorders who require treatment with AEDs to be considered for waivers, similar to those who do not require treatment with AEDs.

(3) On the question of risk of seizure recurrence as a function of time since the last seizure among individuals on AEDs who are apparently seizure-free, AES and the Epilepsy Foundation advised that the risk of recurrent seizures decreases with time seizure-free, on or off AED medications. The other commenter opined that the risk of seizure recurrence in this setting was uncertain and dependent upon too many variables. The Coast Guard agrees with both answers. Because the risk of seizure recurrence decreases with time seizure-free, the policy requires a minimum seizure-free time interval before an affected individual can be considered for a waiver. Additionally, in acknowledgement of the many variables that might affect likelihood of seizure recurrence in a particular individual, the policy allows for an individualized assessment and considers the risk evaluation of the treating neurologist.

(4) On the question of the likelihood of seizure recurrence as a function of time in individuals who are seizure-free following removal of a benign brain tumor, none of the commenters gave a specific answer. AES and the Epilepsy Foundation advised, however, that such a situation was already accounted for in the policy. The other commenter asserted that the answer was too variable to generalize. The Coast Guard agrees. The policy specifies a minimum seizure-free time interval for such individuals, but also allows for an individualized assessment.

(5)–(6) Questions five and six asked about the need and appropriateness of applying operational limitations and/or restrictions for mariners with seizure disorders. Both AES and the Epilepsy Foundation pointed out that the seizure-free time requirements outlined in the policy are conservative enough that if exceeded, there should be no need to differentiate between roles. However, they did recommend that less restrictive criteria be applied to individuals who do not operate dangerous machinery, work over 10 feet above ground, pilot a vessel, or stand watch alone. For these individuals, they recommended consideration for specific jobs if they have been seizure free for one year and

on stable medications for one year. The other commenter advised that use of operational restrictions and limitations may be reasonable depending on the individual's job function and circumstances. The Coast Guard agrees and will consider applying operational limitations and/or restrictions on a case-by-case basis, when appropriate.

(7) Question seven asked if there are individuals with seizure disorders due to a structural brain lesion that are at low-risk for seizure recurrence. Both AES and the Epilepsy Foundation noted that individuals with structural brain lesions are at higher risk, as reflected in the longer restriction times outlined in the policy. The other commenter noted that the answer would depend on the definition of structural brain lesion. The Coast Guard agrees. The policy outlines a minimum seizure-free time interval for such cases, while allowing for an individualized assessment and consideration of exceptional circumstances.

### III. Authority

This notice is issued under the authority of 5 U.S.C. 552(a), 46 U.S.C. 7101 *et seq.*, 46 CFR 10.215, and Department of Homeland Security Delegation No. 0710.1.

Dated: August 28, 2013.

**J.C. Burton,**

*Captain, U.S. Coast Guard, Director of Inspections & Compliance.*

[FR Doc. 2013–23114 Filed 9–20–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA–2013–0002]

### Changes in Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final notice.

**SUMMARY:** New or modified Base (1% annual-chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or the regulatory floodway (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed

communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

**DATES:** The effective date for each LOMR is indicated in the table below.

**ADDRESSES:** Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov).

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) [Luis.Rodriguez3@fema.dhs.gov](mailto:Luis.Rodriguez3@fema.dhs.gov); or visit the FEMA Map Information eXchange (FMIX) online at [www.floodmaps.fema.gov/fhm/fmx\\_main.html](http://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard determinations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

These new or modified flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or

pursuant to policies established by other Federal, State, or regional entities.

These new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance

premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available

at the address cited below for each community or online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov).

| State and county                              | Location and case No.                                   | Chief executive officer of community   | Community map repository  | Effective date of modification | Community No. |
|---|---|--|---|--------------------------------|---------------|
| Florida: St. Johns (FEMA Docket No.: B-1317). | Unincorporated areas of St. Johns County (13-04-1159P). | Mr. Michael D. Wanchick, St. Johns County Administrator, 500 San Sebastian View, St. Augustine, FL 32084.                                  | St. Johns County Administrative Building, 4020 Lewis Speedway, St. Augustine, FL 32084.                         | July 11, 2013 .....            | 125147        |
| New Jersey: Morris (FEMA Docket No.: B-1318). | Township of Hanover (12-02-1077P).                      | The Honorable Ronald F. Francioli, Mayor, Township of Hanover, 1000 Route 10, Whippany, NJ 07981.  | Hanover Township Engineering Department, 1000 Route 10, Whippany, NJ 07981.                                     | July 25, 2013 .....            | 340343        |
| New York:                                     |   |  |   |                                |               |
| Nassau (FEMA Docket No.: B-1313).             | Town of Hempstead (12-02-1677P).                        | The Honorable Kate P. Murray, Supervisor, Town of Hempstead, 1 Washington Street, Hempstead, NY 11550.                                     | Town Hall, 1 Washington Street, Hempstead, NY 11550.  | July 16, 2013 .....            | 360467        |
| Nassau (FEMA Docket No.: B-1313).             | Village of Cedarhurst (12-02-1677P).                    | The Honorable Andrew J. Parise, Mayor, Village of Cedarhurst, 200 Cedarhurst Avenue, Cedarhurst, NY 11516.                                 | Village Hall, 200 Cedarhurst Avenue, Cedarhurst, NY 11516.  | July 16, 2013 .....            | 360460        |
| Nassau (FEMA Docket No.: B-1313).             | Village of Lynbrook (12-02-1677P).                      | The Honorable William J. Hendrick, Mayor, Village of Lynbrook, P.O. Box 7021, Lynbrook, NY 11563.  | Village Hall, 1 Columbus Drive, Lynbrook, NY 11563.   | July 16, 2013 .....            | 360478        |
| Nassau (FEMA Docket No.: B-1313).             | Village of Valley Stream (12-02-1677P).                 | The Honorable Edwin A. Fare, Mayor, Village of Valley Stream, 123 South Central Avenue, Valley Stream, NY 11580.                           | Village Hall, 123 South Central Avenue, Valley Stream, NY 11580.  | July 16, 2013 .....            | 360495        |
| Orange (FEMA Docket No.: B-1313).             | Town of Newburgh (12-02-0928P).                         | The Honorable Wayne Booth, Supervisor, Town of Newburgh, 1496 Route 300, New York, NY 12550.   | Code Compliance Department, 308 Gardnertown Road, Newburgh, NY 12550.   | July 16, 2013 .....            | 360627        |
| Oklahoma:                                     |   |  |   |                                |               |
| Oklahoma (FEMA Docket No.: B-1317).           | City of Oklahoma City (12-06-2435P).                    | The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma, OK 73102.                          | 420 West Main Street, Suite 700, Oklahoma City, OK 73102.   | July 11, 2013 .....            | 405378        |
| Oklahoma (FEMA Docket No.: B-1317).           | City of Oklahoma City (12-06-3471P).                    | The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, 3rd Floor, Oklahoma, OK 73102.                          | 420 West Main Street, Suite 700, Oklahoma City, OK 73102.   | July 11, 2013 .....            | 405378        |
| Oklahoma (FEMA Docket No.: B-1317).           | Unincorporated areas of Oklahoma County (12-06-2435P).  | The Honorable Ray Vaughn, Chairman, Oklahoma County Board of Commissioners, 320 Robert S. Kerr Avenue, Suite 101, Oklahoma City, OK 73102. | Oklahoma County Courthouse, 320 Robert S. Kerr Avenue, Suite 101, Oklahoma City, OK 73102.                      | July 11, 2013 .....            | 400466        |
| Tulsa (FEMA Docket No.: B-1318).              | City of Sand Springs (12-06-3836P).                     | The Honorable Mike Burdge, Mayor, City of Sand Springs, P.O. Box 338, Sand Springs, OK 74063.  | Public Works Building, 109 North Garfield Avenue, Sand Springs, OK 74063.                                       | July 19, 2013 .....            | 400211        |
| Tulsa (FEMA Docket No.: B-1318).              | Unincorporated areas of Tulsa County (12-06-3836P).     | The Honorable Karen Keith, Chairman, Tulsa County Board of Commissioners, 500 South Denver Avenue, Tulsa, OK 74103.                        | Tulsa County Annex Building, 633 West 3rd Street, Room 140, Tulsa, OK 74127.                                    | July 19, 2013 .....            | 400462        |
| Texas:  |   |  |   |                                |               |
| Bexar (FEMA Docket No.: B-1317).              | City of San Antonio (12-06-3532P).                      | The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.   | Department of Public Works, Storm Water Engineering, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204. | July 5, 2013 .....             | 480045        |
| Bexar (FEMA Docket No.: B-1318).              | City of San Antonio (12-06-2419P).                      | The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.   | Department of Public Works, Storm Water Engineering, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204. | July 22, 2013 .....            | 480045        |
| Bexar (FEMA Docket No.: B-1318).              | City of San Antonio (12-06-4141P).                      | The Honorable Julian Castro, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.   | Department of Public Works, Storm Water Engineering, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204. | July 29, 2013 .....            | 480045        |
| Bexar (FEMA Docket No.: B-1318).              | City of Universal City (12-06-3821P).                   | The Honorable John Williams, Mayor, City of Universal City, 2150 Universal City Boulevard, Universal City, TX 78148.                       | City Hall, 2150 Universal City Boulevard, Universal City, TX 78148.   | July 15, 2013 .....            | 480049        |
| Bexar (FEMA Docket No.: B-1317).              | Unincorporated areas of Bexar County (12-06-3532P).     | The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.          | Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.     | July 5, 2013 .....             | 480035        |
| Bexar (FEMA Docket No.: B-1317).              | Unincorporated areas of Bexar County (13-06-0667P).     | The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.          | Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.     | July 11, 2013 .....            | 480035        |

| State and county                   | Location and case No.                                 | Chief executive officer of community  | Community map repository   | Effective date of modification | Community No. |
|------------------------------------|---|---|--|--------------------------------|---------------|
| Bexar (FEMA Docket No.: B-1318).   | Unincorporated areas of Bexar County (13-06-0666P).   | The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.                   | Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.                          | July 17, 2013 .....            | 480035        |
| Cameron (FEMA Docket No.: B-1318). | Town of South Padre Island (12-06-3922P).             | The Honorable Robert N. Pinkerton, Jr., Mayor, Town of South Padre Island, 4601 Padre Boulevard, South Padre Island, TX 78597.                      | 4601 Padre Boulevard, South Padre Island, TX 78597.  | July 26, 2013 .....            | 480115        |
| Collin (FEMA Docket No.: B-1317).  | City of Frisco (12-06-2227P).                         | The Honorable Maher Maso, Mayor, City of Frisco, 6101 Frisco Square Boulevard, 3rd Floor, Frisco, TX 75034.   | 6101 Frisco Square Boulevard, 3rd Floor, Frisco, TX 75034.   | July 8, 2013 .....             | 480134        |
| Collin (FEMA Docket No.: B-1317).  | City of McKinney (12-06-2227P).                       | The Honorable Brian Loughmiller, Mayor, City of McKinney, 222 North Tennessee Street, McKinney, TX 75069.   | 222 North Tennessee Street, McKinney, TX 75069.  | July 8, 2013 .....             | 480135        |
| Collin (FEMA Docket No.: B-1317).  | City of Plano (12-06-2231P).                          | The Honorable Phil Dyer, Mayor, City of Plano, 1520 Avenue K, Plano, TX 75074.  | 1520 Avenue K, Plano, TX 75074.  | July 5, 2013 .....             | 480140        |
| Dallas (FEMA Docket No.: B-1331).  | City of DeSoto (12-06-3277P).                         | The Honorable Carl Sherman, Mayor, City of DeSoto, 211 East Pleasant Run Road, DeSoto, TX 75115.  | Development Services Department, 211 East Pleasant Run Road, DeSoto, TX 75115.   | June 20, 2013 .....            | 480172        |
| Dallas (FEMA Docket No.: B-1331).  | City of Lancaster (12-06-3277P).                      | The Honorable Marcus E. Knight, Mayor, City of Lancaster, 211 North Henry Street, Lancaster, TX 75146.  | City Hall, 211 North Henry Street, Lancaster, TX 75146.  | June 20, 2013 .....            | 480182        |
| Dallas (FEMA Docket No.: B-1317).  | Town of Sunnyvale (12-06-1197P).                      | The Honorable Jim Phaup, Mayor, Town of Sunnyvale, 127 North Collins Road, Sunnyvale, TX 75182.   | Town Hall, 537 Long Creek Road, Sunnyvale, TX 75182.   | July 12, 2013 .....            | 480188        |
| Kaufman (FEMA Docket No.: B-1317). | City of Dallas (12-06-1197P).                         | The Honorable Mike Rawlings, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.  | City Hall, 320 East Jefferson Boulevard, Room 321, Dallas, TX 75203.   | July 12, 2013 .....            | 480171        |
| Parker (FEMA Docket No.: B-1318).  | City of Springtown (13-06-0392P).                     | The Honorable Doug Hughes, Mayor, City of Springtown, 102 East 2nd Street, Springtown, TX 76082.  | 102 East 2nd Street, Springtown, TX 76082.   | July 25, 2013 .....            | 480521        |
| Parker (FEMA Docket No.: B-1318).  | Unincorporated areas of Parker County (13-06-0392P).  | The Honorable Mark Riley, Parker County Judge, 1 Courthouse Square, Weatherford, TX 76086.  | Parker County Courthouse, 1 Courthouse Square, Weatherford, TX 76086.  | July 25, 2013 .....            | 480520        |
| Tarrant (FEMA Docket No.: B-1324). | City of Fort Worth (12-06-3084P).                     | The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.   | Department of Transportation and Public Works, 1000 Throckmorton Street, Fort Worth, TX 76102.                                       | July 11, 2013 .....            | 480596        |
| Virginia:                          |   |   |  |                                |               |
| Fairfax (FEMA Docket No.: B-1317). | Town of Herndon (12-03-2159P).                        | The Honorable Lisa C. Merkel, Mayor, Town of Herndon, P.O. Box 427, Herndon, VA 20172.  | Municipal Center, 777 Lynn Street, Herndon, VA 20170.  | July 11, 2013 .....            | 510052        |
| Fairfax (FEMA Docket No.: B-1317). | Unincorporated areas of Fairfax County (12-03-2159P). | The Honorable Sharon Bulova, Chairman-at-Large, Fairfax County Board of Supervisors, 12000 Government Center Parkway, Suite 530, Fairfax, VA 22035. | Fairfax County Department of Public Works and Environmental Services, 12000 Government Center Parkway, Suite 449, Fairfax, VA 22035. | July 11, 2013 .....            | 515525        |
| Fairfax (FEMA Docket No.: B-1331). | Unincorporated areas of Fairfax County (13-03-0311P). | The Honorable Sharon Bulova, Chairman-at-Large, Fairfax County Board of Supervisors, 12000 Government Center Parkway, Suite 530, Fairfax, VA 22035. | Fairfax County Department of Public Works and Environmental Services, 12000 Government Center Parkway, Suite 449, Fairfax, VA 22035. | July 11, 2013 .....            | 515525        |

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 30, 2013.

**Roy E. Wright,**

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2013-23069 Filed 9-20-13; 8:45 am]

**BILLING CODE 9110-12-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA-2013-0002; Internal Agency Docket No. FEMA-B-1342]**

### Proposed Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth,

Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified

for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

**DATES:** Comments are to be submitted on or before December 23, 2013.

**ADDRESSES:** The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov) for comparison.

You may submit comments, identified by Docket No. FEMA-B-1342, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646-4064, or (email) [Luis.Rodriguez3@fema.dhs.gov](mailto:Luis.Rodriguez3@fema.dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646-4064, or (email) [Luis.Rodriguez3@fema.dhs.gov](mailto:Luis.Rodriguez3@fema.dhs.gov); or visit

the FEMA Map Information eXchange (FMIX) online at [www.floodmaps.fema.gov/fhm/fmx\\_main.html](http://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report

that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at [http://floodsrp.org/pdfs/srp\\_fact\\_sheet.pdf](http://floodsrp.org/pdfs/srp_fact_sheet.pdf).

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov) for comparison.

| Community  | Community map repository address  |
|--|---|
| <b>Bartholomew County, Indiana, and Incorporated Areas</b>   |   |
| Maps Available for Inspection Online at: <a href="http://www.fema.gov/preliminaryfloodhazarddata">http://www.fema.gov/preliminaryfloodhazarddata</a> |   |
| City of Columbus .....   | Bartholomew County Planning Department, 123 Washington Street, Suite 8, Columbus, IN 47201. |
| Town of Edinburgh .....  | Town Hall, 107 South Holland Street, Edinburgh, IN 46124.                                   |
| Town of Hartsville .....   | Town Hall, 290 West Jefferson Street, Hartsville, IN 47244.                                 |
| Town of Hope .....   | Town Hall, 404 Jackson Street, Hope, IN 47246.  |
| Unincorporated Areas of Bartholomew County .....   | Bartholomew County Planning Department, 123 Washington Street, Suite 8, Columbus, IN 47201. |
| <b>Grant County, Indiana, and Incorporated Areas</b>   |   |
| Maps Available for Inspection Online at: <a href="http://www.fema.gov/preliminaryfloodhazarddata">http://www.fema.gov/preliminaryfloodhazarddata</a> |   |
| City of Gas City .....   | City Hall, 211 East Main Street, Gas City, IN 46933.  |
| City of Jonesboro .....  | Grant County Area Plan Commission, 401 South Adams Street, Marion, IN 46953.                |
| City of Marion .....   | City Hall, 301 South Branson Street, Marion, IN 46952.                                      |
| Town of Fairmount .....  | Grant County Area Plan Commission, 401 South Adams Street, Marion, IN 46953.                |
| Town of Matthews .....   | Grant County Area Plan Commission, 401 South Adams Street, Marion, IN 46953.                |
| Town of Sweetser .....   | Grant County Area Plan Commission, 401 South Adams Street, Marion, IN 46953.                |
| Town of Upland .....   | Grant County Area Plan Commission, 401 South Adams Street, Marion, IN 46953.                |
| Town of Van Buren .....  | Grant County Area Plan Commission, 401 South Adams Street, Marion, IN 46953.                |

| Community                                  | Community map repository address   |
|--|--|
| Unincorporated Areas of Grant County ..... | Grant County Area Planning Commission, 401 South Adams Street, Marion, IN 46953. |

**Jackson County, Indiana, and Incorporated Areas**

Maps Available for Inspection Online at: <http://www.fema.gov/preliminaryfloodhazarddata>

|  |  |
|--|--|
| City of Seymour .....                        | Department of Planning and Zoning, 301 North Chestnut Street, Seymour, IN 47274. |
| Town of Brownstown .....                     | Town Hall, 200 West Walnut Street, Brownstown, IN 47220.                         |
| Town of Crothersville .....                  | Town Hall, 111 East Howard Street, Crothersville, IN 47229.                      |
| Town of Medora .....                         | Town Hall, 27 North Perry Street, Medora, IN 47260.                              |
| Unincorporated Areas of Jackson County ..... | Jackson County Courthouse, 111 South Main Street, Brownstown, IN 47220.          |

**Saline County, Illinois, and Incorporated Areas**

Maps Available for Inspection Online at: [www.fema.gov/preliminaryfloodhazarddata](http://www.fema.gov/preliminaryfloodhazarddata)

|   |   |
|---|---|
| City of Eldorado .....                      | City Hall, 901 4th Street, Eldorado, IL 62930.                  |
| City of Harrisburg .....                    | City Hall, 110 East Locust Street, Harrisburg, IL 62946.        |
| Unincorporated Areas of Saline County ..... | County Courthouse, 10 East Poplar Street, Harrisburg, IL 62946. |
| Village of Muddy .....                      | Village Hall, 60 Maple Street, Muddy, IL 62965.                 |

**Floyd County, Iowa, and Incorporated Areas**

Maps Available for Inspection Online at: <http://www.fema.gov/preliminaryfloodhazarddata>

|  |  |
|--|--|
| City of Charles City .....                 | City Hall, 105 Milwaukee Mall, Charles City, IA 50616.                             |
| Unincorporated Areas of Floyd County ..... | Floyd County Courthouse, 101 South Main Street, Suite 108, Charles City, IA 50616. |

**Woodbury County, Iowa, and Incorporated Areas**

Maps Available for Inspection Online at: [www.fema.gov/preliminaryfloodhazarddata](http://www.fema.gov/preliminaryfloodhazarddata)

|   |  |
|---|--|
| City of Sioux City .....                      | City Hall, 405 6th Street, Sioux City, IA 51102.   |
| Unincorporated Areas of Woodbury County ..... | Woodbury County Courthouse, Office of Planning and Zoning, 620 Douglas Street, Sioux City, IA 51101. |

**Arenac County, Michigan (All Jurisdictions)**

Maps Available for Inspection Online at: [www.fema.gov/preliminaryfloodhazarddata](http://www.fema.gov/preliminaryfloodhazarddata)

|                              |   |
|------------------------------|---|
| City of Au Gres .....        | City Hall, 124 West Huron Road, Au Gres, MI 48703.              |
| City of Omer .....           | City Hall, 201 East Center Street, Omer, MI 48749.              |
| City of Standish .....       | City Hall, 399 East Beaver Street, Standish, MI 48658.          |
| Township of Arenac .....     | Township Office, 2596 State Road, Standish, MI 48658.           |
| Township of Au Gres .....    | Township Office, 1865 Swenson Road, Au Gres, MI 48703.          |
| Township of Clayton .....    | Township Office, 1057 Dobler Road, Sterling, MI 48659.          |
| Township of Deep River ..... | Township Office, 525 East State Street, Sterling, MI 48659.     |
| Township of Lincoln .....    | Township Office, 5173 Johnsfield Road, Standish, MI 48658.      |
| Township of Mason .....      | Township Office, 1225 West Maple Ridge Road, Twining, MI 48766. |
| Township of Moffatt .....    | Township Office, 7842 Newberry Street, Alger, MI 48610.         |
| Township of Sims .....       | Township Office, 4489 East Huron Road, Au Gres, MI 48703.       |
| Township of Standish .....   | Township Hall, 4997 Arenac State Road, Standish, MI 48658.      |
| Township of Turner .....     | Township Office, 110 Park Street, Twining, MI 48766.            |
| Township of Whitney .....    | Township Office, 1515 North Huron Road, Tawas City, MI 48763.   |
| Village of Turner .....      | Town Hall, 109 West Main Street, Turner, MI 48765.              |

**Chippewa County, Michigan (All Jurisdictions)**

Maps Available for Inspection Online at: <http://www.fema.gov/preliminaryfloodhazarddata>

|                                   |  |
|-----------------------------------|--|
| Bay Mills Indian Community .....  | Bay Mills Indian Community Tribal Office, 12140 West Lakeshore Drive, Brimley, MI 49715. |
| Charter Township of Kinross ..... | Kinross Charter Township Hall, 4884 West Curtis Street, Kincheloe, MI 49788.             |
| City of Sault Sainte Marie .....  | City Hall, 225 East Portage Avenue, Sault Sainte Marie, MI 49783.                        |
| Township of Bay Mills .....       | Bay Mills Township Hall, 14740 West Lakeshore Drive, Brimley, MI 49715.                  |
| Township of Bruce .....           | Bruce Township Hall, 3156 East 12 Mile Road, Dafter, MI 49724.                           |
| Township of Dafter .....          | Township of Dafter Map Repository, 10184 South Wilson Drive, Dafter, MI 49724.           |

| Community                         | Community map repository address  |
|-----------------------------------|---|
| Township of De Tour .....         | Municipal Offices, 260 South Superior Street, De Tour Village, MI 49725.                |
| Township of Drummond Island ..... | Township Hall, 29935 East Pine Street, Drummond Island, MI 49726.                       |
| Township of Hulbert .....         | Township Hall, 37685 West 4th Street, Hulbert, MI 49748.                                |
| Township of Pickford .....        | Township Hall, 155 East Main Street, Pickford, MI 49774.                                |
| Township of Raber .....           | Raber Township Community Building, 16315 East M-48, Goetzville, MI 49736.               |
| Township of Soo .....             | Soo Township Hall, 639 3 1/2 Mile Road, Sault Sainte Marie, MI 49783.                   |
| Township of Sugar Island .....    | Sugar Island Community Center, 6401 East 1 1/2 Mile Road, Sault Sainte Marie, MI 49783. |
| Township of Superior .....        | Superior Township Hall, 7049 South M-221, Brimley, MI 49715.                            |
| Township of Whitefish .....       | Whitefish Township Hall, 7052 North M-123, Paradise, MI 49768.                          |
| Village of De Tour .....          | Village Hall, 260 South Superior Street, De Tour Village, MI 49725.                     |

#### Erie County, Ohio, and Incorporated Areas

Maps Available for Inspection Online at: [www.starr-team.com/starr/RegionalWorkspaces/RegionV/ErieOH](http://www.starr-team.com/starr/RegionalWorkspaces/RegionV/ErieOH)

|   |  |
|---|--|
| City of Huron .....                       | 1820 Bogart Road, Huron, OH 44839.   |
| City of Sandusky .....                    | 222 Meigs Street, Sandusky, OH 44870.  |
| Unincorporated Areas of Erie County ..... | Erie Regional Planning Commission, 2900 Columbus Avenue, Sandusky, OH 44870. |
| Village of Berlin Heights .....           | 8 West Main Street, Berlin Heights, OH 44814.                                |
| Village of Milan .....                    | 11 South Main Street, Milan, OH 44846.                                       |

#### Little Scioto-Tygarts Watershed Lawrence County, Ohio, and Incorporated Areas

Maps Available for Inspection Online at: [www.fema.gov/preliminaryfloodhazarddata](http://www.fema.gov/preliminaryfloodhazarddata)

|   |   |
|---|---|
| Unincorporated Areas of Lawrence County ..... | 111 South 4th Street, Ironton, OH 45638.    |
| Village of South Point .....                  | 408 2nd Street West, South Point, OH 45680. |

#### Upper Great Miami, Indiana, Ohio Watershed Shelby County, Ohio, and Incorporated Areas

Maps Available for Inspection Online at: [www.fema.gov/preliminaryfloodhazarddata](http://www.fema.gov/preliminaryfloodhazarddata)

|   |   |
|---|---|
| City of Sidney .....                        | 201 West Poplar Street, Sidney, OH 45365.         |
| Unincorporated Areas of Shelby County ..... | 129 East Court Street, Floor 2, Sidney, OH 45365. |
| Village of Anna .....                       | 209 West Main Street, Anna, OH 45302.             |
| Village of Botkins .....                    | 210 South Mill Street, Botkins, OH 45306.         |
| Village of Fort Loramie .....               | 14 Elm Street, Fort Loramie, OH 45845.            |
| Village of Jackson Center .....             | 122 East Pike Street, Jackson Center, OH 45334.   |
| Village of Lockington .....                 | 129 East Court Street, Floor 2, Sidney, OH 45365. |
| Village of Port Jefferson .....             | 129 East Court Street, Floor 2, Sidney, OH 45365. |
| Village of Russia .....                     | 232 West Main Street, Russia, OH 45363.           |

#### Waukesha County, Wisconsin, and Incorporated Areas

Maps Available for Inspection Online at: [www.fema.gov/preliminaryfloodhazarddata](http://www.fema.gov/preliminaryfloodhazarddata)

|   |   |
|---|---|
| City of Delafield .....                       | City Hall, 500 Genesee Street, Delafield, WI 53018.                                     |
| City of Oconomowoc .....                      | City Hall, 174 East Wisconsin Avenue, Oconomowoc, WI 53066.                             |
| Unincorporated Areas of Waukesha County ..... | Waukesha County Administration Center, 515 West Moorland Boulevard, Waukesha, WI 53188. |
| Village of Chenequa .....                     | Village Hall, 31275 West Highway K, Chenequa, WI 53029.                                 |
| Village of Dousman .....                      | Village Hall, 118 South Main Street, Dousman, WI 53118.                                 |
| Village of Hartland .....                     | Village Hall, 210 Cottonwood Avenue, Hartland, WI 53029.                                |
| Village of Lac La Belle .....                 | Village Hall, 600 Lac La Belle Drive, Lac La Belle, WI 53066.                           |
| Village of Merton .....                       | Village Hall, N67W28343 Sussex Road, Merton, WI 53056.                                  |
| Village of Nashotah .....                     | Village Hall, N44W32950 Watertown Plank Road, Nashotah, WI 53058.                       |
| Village of Oconomowoc Lake .....              | Village Hall, 35328 West Pabst Road, Oconomowoc Lake, WI 53066.                         |
| Village of Summit .....                       | Village Hall, 2911 North Dousman Road, Oconomowoc, WI 53066.                            |

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 30, 2013.

**Roy E. Wright,**

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2013-23068 Filed 9-20-13; 8:45 am]

**BILLING CODE 9110-12-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA-2013-0002; Internal Agency Docket No. FEMA-B-1347]

### Proposed Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and

others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

**DATES:** Comments are to be submitted on or before December 23, 2013.

**ADDRESSES:** The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov) for comparison.

You may submit comments, identified by Docket No. FEMA-B-1347, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646-4064, or (email) [Luis.Rodriguez3@fema.dhs.gov](mailto:Luis.Rodriguez3@fema.dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646-4064, or (email) [Luis.Rodriguez3@fema.dhs.gov](mailto:Luis.Rodriguez3@fema.dhs.gov); or visit the FEMA Map Information eXchange (FMIX) online at [www.floodmaps.fema.gov/fhm/fmx\\_main.html](http://www.floodmaps.fema.gov/fhm/fmx_main.html).

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact

stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at [http://floodsrp.org/pdfs/srp\\_fact\\_sheet.pdf](http://floodsrp.org/pdfs/srp_fact_sheet.pdf).

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at [www.msc.fema.gov](http://www.msc.fema.gov) for comparison.

| Community | Community map repository address |
|-----------|----------------------------------|
|-----------|----------------------------------|

#### Walker County, Alabama, and Incorporated Areas

Maps Available for Inspection Online at: [www.fema.gov/preliminaryfloodhazarddata](http://www.fema.gov/preliminaryfloodhazarddata)

|                           |  |
|---------------------------|--|
| City of Carbon Hill ..... | City Hall, 170 NW 2nd Avenue, Carbon Hill, AL 35549. |
| City of Cordova .....     | City Hall, 74 Main Street, Cordova, AL 35550.        |
| City of Dora .....        | City Hall, 1485 Sharon Boulevard, Dora, AL 35062.    |
| City of Jasper .....      | City Hall, 400 West 19th Street, Jasper, AL 35501.   |
| Town of Eldridge .....    | Town Hall, 208 Smothers Avenue, Eldridge, AL 35554.  |
| Town of Kansas .....      | Town Hall, 497 Old Highway 78, Kansas, AL 35573.     |
| Town of Nauvoo .....      | Town Hall, 176 McDaniel Avenue, Nauvoo, AL 35578.    |
| Town of Oakman .....      | Town Hall, 8236 Market Street, Oakman, AL 35579.     |
| Town of Parrish .....     | Town Hall, 6484 Highway 269, Parrish, AL 35580.      |

| Community                                   | Community map repository address   |
|---|--|
| Town of Sipsey .....                        | Town Hall, 3635 Sipsey Road, Sipsey, AL 35584.                                 |
| Town of Sumiton .....                       | Town Hall, 416 State Street, Sumiton, AL 35148.                                |
| Unincorporated Areas of Walker County ..... | Walker County Engineering Department, 1801 3rd Avenue South, Jasper, AL 35502. |

**Navajo County, Arizona, and Incorporated Areas**

Maps Available for Inspection Online at: [www.fema.gov/preliminaryfloodhazarddata](http://www.fema.gov/preliminaryfloodhazarddata)

|   |  |
|---|--|
| City of Holbrook .....                      | 465 First Avenue, Holbrook, AZ 86025.                              |
| City of Show Low .....                      | 200 West Cooley Street, Show Low, AZ 85901.                        |
| Town of Pinetop-Lakeside .....              | 1360 North Niels Hanson Lane, Pinetop-Lakeside, AZ 85929.          |
| Unincorporated Areas of Navajo County ..... | Flood Control Division, 100 East Carter Drive, Holbrook, AZ 86025. |

**Citrus County, Florida, and Incorporated Areas**

Maps Available for Inspection Online at: [www.fema.gov/preliminaryfloodhazarddata](http://www.fema.gov/preliminaryfloodhazarddata)

|   |  |
|---|--|
| City of Crystal River .....                 | City Hall, 123 NW U.S. Highway 19, Crystal River, FL 34428.              |
| City of Inverness .....                     | City Hall, 212 West Main Street, Inverness, FL 34450.                    |
| Unincorporated Areas of Citrus County ..... | Lecanto Government Complex, 3600 West Sovereign Path, Lecanto, FL 34461. |

**Glades County, Florida, and Incorporated Areas**

Maps Available for Inspection Online at: [www.fema.gov/preliminaryfloodhazarddata](http://www.fema.gov/preliminaryfloodhazarddata)

|   |   |
|---|---|
| City of Moore Haven .....                   | 299 Riverside Drive, Moore Haven, FL 33471. |
| Unincorporated Areas of Glades County ..... | 500 Avenue J, Moore Haven, FL 33471.        |

**Pasco County, Florida, and Incorporated Areas**

Maps Available for Inspection Online at: [www.fema.gov/preliminaryfloodhazarddata](http://www.fema.gov/preliminaryfloodhazarddata)

|  |   |
|--|---|
| City of Dade City .....                    | City Hall, 14206 U.S. Highway 98 Bypass, Dade City, FL 33523.                   |
| City of New Port Richey .....              | City Hall, 5919 Main Street, New Port Richey, FL 34652.                         |
| City of Port Richey .....                  | City Hall, 6333 Ridge Road, Port Richey, FL 34668.                              |
| City of San Antonio .....                  | City Hall, 32819 Pennsylvania Avenue, San Antonio, FL 33576.                    |
| City of Zephyrhills .....                  | City Hall, 5335 8th Street, Zephyrhills, FL 33542.                              |
| Town of St. Leo .....                      | Town Hall, 34544 State Road 52, Saint Leo, FL 33574.                            |
| Unincorporated Areas of Pasco County ..... | New Port Richey Government Center, 7530 Little Road, New Port Richey, FL 34654. |

**City and County of Honolulu, Hawaii**

Maps Available for Inspection Online at: [www.fema.gov/preliminaryfloodhazarddata](http://www.fema.gov/preliminaryfloodhazarddata)

|                                   |   |
|-----------------------------------|---|
| City and County of Honolulu ..... | Department of Planning and Permitting, 650 South King Street, Honolulu, HI 96813. |
|-----------------------------------|---|

**Greenup County, Kentucky, and Incorporated Areas**

Maps Available for Inspection Online at: [www.fema.gov/preliminaryfloodhazarddata](http://www.fema.gov/preliminaryfloodhazarddata)

|  |  |
|--|--|
| City of Bellefonte .....                     | Bellefonte City Hall, 705 Bellefonte Princess Road, Ashland, KY 41101.   |
| City of Greenup .....                        | City Hall, 1005 Walnut Street, Greenup, KY 41144.                        |
| City of Raceland .....                       | City Hall, 711 Chinn Street, Raceland, KY 41169.                         |
| City of Russell .....                        | City Hall, 410 Ferry Street, Russell, KY 41169.                          |
| City of South Shore .....                    | City Hall, 69 Narco Drive, South Shore, KY 41175.                        |
| City of Worthington .....                    | City Hall, 512 Ferry Street, Worthington, KY 41183.                      |
| City of Wurtland .....                       | City Hall, 500 Wurtland Avenue, Wurtland, KY 41144.                      |
| Unincorporated Areas of Greenup County ..... | Greenup County Courthouse, 301 Main Street, Room 102, Greenup, KY 41144. |

**Missoula County, Montana, and Incorporated Areas**

Maps Available for Inspection Online at: [www.fema.gov/preliminaryfloodhazarddata](http://www.fema.gov/preliminaryfloodhazarddata)

|   |                                       |
|---|---------------------------------------|
| City of Missoula .....                        | 435 Ryman Street, Missoula, MT 59802. |
| Unincorporated Areas of Missoula County ..... | 317 Woody Street, Missoula, MT 59802. |

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 30, 2013.

**Roy E. Wright,**

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2013-23065 Filed 9-20-13; 8:45 am]

BILLING CODE 9110-12-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R6-R-2013-N158;  
FXRS1265066CCP0-134-FF06R06000]

#### Cokeville Meadows National Wildlife Refuge, Lincoln County, WY; Draft Comprehensive Conservation Plan and Environmental Assessment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; announcement of meeting; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce that our draft comprehensive conservation plan (CCP) and environmental assessment (EA) for the Cokeville Meadows National Wildlife Refuge (Refuge) is available for public review and comment. The draft CCP/EA describes how the Service intends to manage this Refuge for the next 15 years. We provide this notice in compliance with our CCP policy to advise the public, other Federal and State agencies, and Tribes of the availability of the draft CCP/EA and to solicit comments.

**DATES:** To ensure consideration, we must receive your written comments on the draft CCP/EA by October 21, 2013. Submit comments by one of the methods under **ADDRESSES**. We will hold a public meeting; see *Public Meeting* under **SUPPLEMENTARY INFORMATION** for the date, time, and location.

**ADDRESSES:** Send your comment or requests for more information by any of the following methods.

*Email:* [seedskadee@fws.gov](mailto:seedskadee@fws.gov). Include "Cokeville Meadows NWR Draft CCP and EA" in the subject line of the message.

*Fax:* Attn: Bernardo Garza, 303-236-4792.

*U.S. Mail:* U.S. Fish and Wildlife Service, Division of Refuge Planning, P.O. Box 25486, Denver Federal Center, Denver, CO 80225.

*In-Person Drop-off, Viewing, or Pickup:* Call 303-236-4377 to make an

appointment (necessary for view/pickup only) during regular business hours at 134 Union Boulevard, Suite 300, Lakewood, CO 80228.

*Document Request:* A copy of the CCP/EA may be obtained by writing to U.S. Fish and Wildlife Service, Division of Refuge Planning, 134 Union Boulevard, Suite 300, Lakewood, CO 80228; or by download from <http://mountain-prairie.fws.gov/planning>.

**FOR FURTHER INFORMATION CONTACT:**

Bernardo Garza, 303-236-4377, (phone) or [bernardo\\_garza@fws.gov](mailto:bernardo_garza@fws.gov) (email); or David C. Lucas, 303-236-4366 (phone), P.O. Box 25486, Denver Federal Center, Denver, CO 80225-0486.

**SUPPLEMENTARY INFORMATION:**

#### Introduction

With this notice, we continue the CCP process for the Cokeville Meadows NWR. We started this process through a notice in the **Federal Register** (74 FR 57328; November 5, 2009). This notice complies with our CCP policy to (1) advise other Federal and State agencies, Tribes, and the public of the availability of the draft CCP/EA for this refuge and (2) to obtain comments on the information provided in the draft CCP/EA.

#### Background

##### *The CCP Process*

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each unit of the National Wildlife Refuge System (Refuge System). The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving the purposes for which their refuge was established and contributing toward the mission of the Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

##### *The Refuge*

Cokeville Meadows NWR was established in 1993 for the conservation

of the wetlands of the nation, in order to maintain the public benefits they provide and to help fulfill international obligations contained in various migratory bird treaties and conventions, as well as for use as an inviolate sanctuary for migratory birds. This refuge is bisected throughout its length by the Bear River and contains a mosaic of wet meadows and cattail/bulrush sloughs. Many of these wetlands were originally created and maintained by agricultural practices. The shrub-steppe uplands are dominated by sagebrush and a combination of grasses typical of the arid West. Cokeville Meadows NWR provides nesting habitat for at least 32 water bird species; if developed, these habitats could provide suitable nesting habitat for more migratory bird species, including the trumpeter swan, a species of management concern. Refuge habitats also provide important habitat for resident species. Greater sage grouse use upland sagebrush areas for nesting, while riparian areas provide important feeding sites for their broods and a variety of neotropical migratory birds. Big game, including antelope, mule deer, and elk, also utilize Refuge habitats.

##### *Public Outreach*

We started the CCP for the Cokeville Meadows NWR in early November 2009, by inviting the Wyoming Game, Fish and Parks Department and 12 Native American tribal governments to participate in the planning process. The planning team was assembled in late November during the CCP Kickoff Meeting. We developed a mailing list and sent a planning update to all individuals and groups on that list. The planning update included basic information on the Refuge, the planning process, how the public could provide comments and become involved in the planning process, and the dates, times, and places of the two public meetings we held in public venues in two communities near the Refuge (also in November). At that time and throughout the process, we requested public comments and considered and incorporated them in numerous ways. Comments we received cover topics such as invasive plant control on refuge lands, opening the refuge to hunting and fishing opportunities, improvement of the water quality and fisheries in the Bear River, public access to the Refuge, and the Refuge habitats' management tools (e.g., grazing, haying, farming, water flooding, etc.). We have considered and evaluated all of these comments, with many incorporated into the various alternatives addressed in the draft CCP and the EA.

**CCP Alternatives We Are Considering**

During the public scoping process with which we started work on this draft CCP, we, State of Wyoming

wildlife officials, representatives of the City of Cokeville, the Lincoln County Planning Department, the Bureau of Land Management, and the public raised several issues. Our draft CCP

addresses them. A full description of each alternative is in the EA. To address these issues, we developed and evaluated the following alternatives, summarized below.

|  | Alternative A: Current management (No action)  | Alternative B: Hydrology and Habitat Restoration  | Alternative C: Resource enhancement   | Alternative D: Landscape-level management (Proposed action)  |
|--|--|---|---|--|
| Public Access to Refuge Lands to Engage in Wildlife-Dependent Public Uses.   | Refuge remains closed to public access except for information kiosk, walking trail at Netherly Slough and headquarters, and to opportunistic, staff-guided, environmental education programs.  | The Refuge:<br>Maintains the existing open areas;<br>Opens new access points and areas of the refuge to migratory bird, big and small game hunting, and fishing;<br>Seeks to provide self-guided interpretive opportunities;<br>Provides information wildlife observation and photography opportunities.    | Same as Alternative B.<br>Plus:<br>Refuge staff seeks partners to restore Bear River riparian corridor to improve the river's water and fisheries quality.  | Same as Alternative C.<br>Plus:<br>Refuge staff expands partnerships throughout Wyoming's Bear River watershed to improve habitats and movement corridors for wildlife and fishes. |
| Habitat and Wildlife Management.   | Continue current levels of irrigation, haying, and grazing to manage refuge habitats.  | Haying and grazing used to manage refuge habitats.<br>Agricultural crops used solely as a tool to reestablish native habitats.<br>Consider removing water management infrastructure to replace current irrigation with overbank flooding during river high flows to manage wet meadow and wetland habitats. | Upland habitats are managed and restored to increase wildlife productivity and diversity.<br>Wet meadow and wetland habitats are managed with water diversions from the Bear River.<br>Agricultural practices are geared to enhance refuge habitats for wildlife. | Same as Alternative C.   |
| Monitoring and Research ..   | Maintain partnerships on limited and opportunistic monitoring of wildlife populations, habitats and water quality conditions.<br>Continue permitting research activities when compatible with refuge purposes.                                 | Same as Alternative A .....   | Same as alternative A, but in more programmatic fashion. Plus the staff:<br>Pursues funding and research opportunities with higher education institutions;<br>Actively seeks new partners to enhance its monitoring capabilities.                                 | Same as Alternative C, plus the refuge:<br>Expands partnerships to include new partners throughout Wyoming's Bear River watershed.   |
| Invasive Species .....   | Continue coordinating and working with the Lincoln County to monitor and control treat invasive plants through integrated pest management, including chemical, biological, and mechanical methods.   | Same as Alternative A.<br>Plus the staff:<br>Works with cooperators to address invasive aquatic species throughout Bear River watershed.<br>Works with partners to control carp, and improve water quality on refuge wet meadow and riverine habitats   | Same as Alternative B .....   | Same as Alternative B.<br>Plus:<br>The staff expands its involvement and partnerships to control invasive species throughout Wyoming's Bear River watershed.                       |
| Wildlife Disease, Crop Depredation, and Wildlife Damage to Private Property. | Continue work with the State to separate elk herd from cattle on refuge lands to keep wildlife diseases from domestic cattle.<br>Continue to grow small grain crops on refuge lands to keep migratory birds from depredating on private crops. | The refuge establishes hunt program which would alleviate wildlife and cattle comingling and crop depredation issues.   | Same as Alternative B .....   | Same as Alternative B.   |

|  | Alternative A: Current management (No action)  | Alternative B: Hydrology and Habitat Restoration  | Alternative C: Resource enhancement | Alternative D: Landscape-level management (Proposed action) |
|--|--|---|-------------------------------------|---|
| Funding, Staffing, Infrastructure, and Partnerships. | Refuge to remain unmanned.<br>No new or added vehicles, infrastructure or equipment. Replace them only as needed.<br>Current staffing and funding will preclude pursuing new partnerships. | Staffing and funding would need to be expanded to:<br>Carry out the plan;<br>Build and maintain access roads, auto tour route, and parking facilities;<br>Maintain existing and establish new partnerships. | Same as Alternative B .....         | Same as Alternative B.                                      |

### Public Meeting

Opportunity for public input will be provided at the following public open house meeting.

| Date                     | Time                | Location   |
|--------------------------|---------------------|--|
| September 26, 2013 ..... | 5:30–7:30 p.m. .... | Cokeville High School, Auditorium, 435 Pine Street, Cokeville, WY 83114. |

### Next Steps

After the public reviews and provides comments on the draft CCP and EA, the planning team will present this document, along with a summary of all substantive public comments, to the Regional Director. The Regional Director will consider the environmental effects of each alternative, including information gathered during public review, and will select a preferred alternative for the draft CCP and EA. If the Regional Director finds that no significant impacts would occur, the Regional Director's decision will be disclosed in a finding of no significant impact included in the final CCP. If the Regional Director finds a significant impact would occur, an environmental impact statement will be prepared. If approved, the action in the preferred alternative will compose the final CCP.

### Public Availability of Comments

All public comment information provided voluntarily by mail, by phone, or at meetings (e.g., names, addresses, letters of comment, input recorded during meetings) becomes part of the official public record. If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide copies of such information.

### Authority

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 et seq.); NEPA Regulations (40 CFR parts 1500–1508, 43 CFR Part 46); other

appropriate Federal laws and regulations; Executive Order 12996; the National Wildlife Refuge System Improvement Act of 1997; and Service policies and procedures for compliance with those laws and regulations.

Dated: August 20, 2013.

**Noreen Walsh,**

*Regional Director, Mountain-Prairie Region,  
U.S. Fish and Wildlife Service.*

[FR Doc. 2013–23107 Filed 9–20–13; 8:45 am]

**BILLING CODE 4310–55–P**

### DEPARTMENT OF THE INTERIOR

#### Bureau of Land Management

#### Fish and Wildlife Service

#### National Park Service

[NPS–WASO–VRP–14127; PXXVPADO515]

### DEPARTMENT OF AGRICULTURE

#### Forest Service

#### Proposed Fee Schedule for Commercial Filming and Still Photography Permits

**AGENCY:** Office of the Secretary, Bureau of Land Management, U.S. Fish and Wildlife Service, National Park Service, Interior; Forest Service, Agriculture.

**ACTION:** Extension of public comment period.

**SUMMARY:** The Department of the Interior and the Department of Agriculture are extending the public comment period for the proposed fee schedule for commercial filming and

still photography conducted on public lands under their jurisdiction. The additional comment period is in response to a request.

**DATES:** Written comments will be accepted through October 23, 2013.

**ADDRESSES:** You may submit comments by any of the following methods:

- **Email:** [location\\_fee\\_notice\\_2013@nps.gov](mailto:location_fee_notice_2013@nps.gov); put “Commercial Filming Fee Schedule” in the subject line.

- **Mail:** Lee Dickinson, Special Park Uses Program Manager, National Park Service, 1849 C Street NW., ORG CODE 2460, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Lee Dickinson, National Park Service at 202–513–7092 or by email at [lee\\_dickinson@nps.gov](mailto:lee_dickinson@nps.gov). Individuals who use telecommunication devices for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above named individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** On August 22, 2013 we published in the **Federal Register** a proposed location fee schedule to establish land-use fees for commercial filming and still photography that are consistent for the National Park Service, the U.S. Fish and Wildlife Service, the Bureau of Land Management and U.S. Forest Service (78 FR 52209). The fees would provide a fair return to the United States, as required by law. Comments were accepted for 30 days, closing on September 23, 2013. After receiving a

request for additional time to comment, we are extending the public comment period for 30 days, and will accept comments through October 23, 2013. If you already commented on the rule you do not have to resubmit your comments.

Dated: September 19, 2013.

**Rachel Jacobson,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2013–23186 Filed 9–20–13; 8:45 am]

**BILLING CODE 4312-EJ-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLCO956000 L14200000.BJ0000]

#### Notice of Filing of Plats of Survey; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Filing of Plats of Survey; Colorado

**SUMMARY:** The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the intent to officially file the survey plats listed below and afford a proper period of time to protest this action prior to the plat filing. During this time, the plats will be available for review in the BLM Colorado State Office.

**DATES:** Unless there are protests of this action, the filing of the plats described in this notice will happen on October 23, 2013.

**ADDRESSES:** BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7093.

**FOR FURTHER INFORMATION CONTACT:** Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The plat and field notes of the corrective dependent resurvey in Township 13 South, Range 70 West, Sixth Principal Meridian, Colorado, were accepted July 23, 2013.

The plat and field notes of the corrective dependent resurvey, dependent resurvey and survey in Township 14 South, Range 68 West,

Sixth Principal Meridian, Colorado, were accepted on July 30, 2013.

The plat and field notes of the dependent resurvey and survey in Township 14 South, Range 69 West, Sixth Principal Meridian, Colorado, were accepted on July 30, 2013. The plat, in 2 sheets, and field notes of the dependent resurvey and survey in Township 8 South, Range 78 West, Sixth Principal Meridian, Colorado, were accepted on August 28, 2013.

**Randy Bloom,**

*Chief Cadastral Surveyor for Colorado.*

[FR Doc. 2013–23108 Filed 9–20–13; 8:45 am]

**BILLING CODE 4310-JB-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS–WASO–NRSS–SSD–14130; PPWONRADCO, PPMRSNR1N.NM0000]

#### Information Collection Activities: Visitor Perceptions of Climate Change in U.S. National Parks

**AGENCY:** National Park Service (NPS), Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We, (National Park Service), will ask the Office of Management and Budget (OMB) to approve the Information Collection (IC) described below. This collection will consist of a single survey instrument that will be administered through the National Park System. As required by the Paperwork Reduction Act of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. The PRA (44 U.S.C. 3501, et seq.) provides that we may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** To ensure that your comments on this IC are considered, we must receive them on or before November 22, 2013.

**ADDRESSES:** Please send your comments to Phadrea Ponds, Information Collections Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *phadrea\_ponds@nps.gov* (email). Please reference Information Collection 1024–NEW, *Visitor Perceptions of Climate Change in U.S. National Parks* in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Angie Richman, Communication Specialist, Climate Change Response

Program, at 1201 Oakridge Drive, Suite 200, Fort Collins, CO 80525 (mail) or *angie\_richman@nps.gov* (email).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The National Park Service (NPS) Units are valuable public spaces that serve many purposes including providing recreational opportunities and protecting our nations natural and cultural resources. In order to continue to preserve scenery, natural landscapes, and historic objects, it is important for NPS staff and visitors to understand the various benefits of and challenges to NPS units. Furthermore, it is also important to discuss what can be done within and outside the parks to preserve these benefits for future generations.

As per the NPS Climate Change Action Plan, the NPS is seeking to promote resource stewardship and public understanding of how climate change will impact the National Park units. Data on how to best meet these objectives is needed to ensure public outreach and communication materials are well received and effective. The results of this study will provide NPS staff with recommendations and tools to effectively communicate climate related impacts in national parks and how the NPS is taking action to address these impacts. A questionnaire will be used to assess visitors' responses to climate change messages at thirty parks across the country.

##### II. Data

*OMB Control Number:* XXXX–New.

*Title:* Visitor Perceptions of Climate Change in US National Parks.

*Type of Request:* NEW.

*Description of Respondents:* Individual.

*Respondent's Obligation:* Voluntary.

*Frequency of Collection:* One time.

*Estimated Number of Responses:* 9,000. We estimate an average of 300 responses per park, across 30 parks.

*Annual Burden Hours:* 1,500 hours. We estimate an average of 10 minutes per response.

*Estimated Reporting and Recordkeeping "Non-Hour Cost"* Burden: None.

##### III. Request for Comments

We invite comments concerning this IC on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be

collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: September 18, 2013.

**Madonna L. Baucum,**

*Information Collection Clearance Officer,  
National Park Service.*

[FR Doc. 2013-23061 Filed 9-20-13; 8:45 am]

BILLING CODE 4310-EH-P

## DEPARTMENT OF INTERIOR

### National Park Service

[NPS-WASO-NRSS-SSD-14131;  
PPWONRADE2, PMP00E105.YP0000]

#### Proposed Information Collection: Colorado River Total Value Survey

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other federal agencies to take this opportunity to comment on this IC. A federal agency not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**DATES:** To ensure that your comments on this IC are considered, we must receive them on or before November 22, 2013.

**ADDRESSES:** Direct all written comments on this IC to Bret Meldrum, Chief, Social Science Program, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525-5596 (mail); *Bret\_Meldrum@nps.gov* (email); or 970-267-7295 (phone) and Phadrea Ponds, Information Collection Coordinator, National Park Service, 1201 Oakridge

Drive, Fort Collins, CO 80525 (mail); or *pponds@nps.gov* (email). Please reference Information Collection 1024-COLORIV in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Dr. John Duffield, University of Montana, Department of Mathematical Sciences, Missoula, MT 5981; *bioecon@montana.com* (email); or 406-721-2265 (phone).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The National Park Service (NPS) Act of 1916, 38 Stat 535, 16 U.S.C. 1, et seq., requires that the NPS preserve national parks for the use and enjoyment of present and future generations. This collection will provide park managers and NPS partners with information about the values U.S. residents place on the Grand Canyon of the Colorado River riparian resource, and on alternative flow release scenarios from Glen Canyon Dam designed to protect canyon flora and fauna. The final survey will provide information for the economic analysis of the alternative management and operation protocols for Glen Canyon Dam. The economic analysis provides one piece of information that the Secretary of the Interior will use to evaluate future dam operation plans associated with the current ongoing Glen Canyon DEIS. This notice will cover the development and pretesting of the final survey instrument.

##### II. Data

*OMB Number:* None. This is a new collection.

*Title:* Colorado River Total Value Survey.

*Type of Request:* New.

*Affected Public:* General public; Individual households.

*Respondent Obligation:* Voluntary.

*Frequency of Collection:* One-time.

*Estimated Number of Annual*

*Responses:* 2,000.

*Annual Burden Hours:* 1,000 hours. We estimate the public reporting burden to be 30 minutes per completed survey response.

*Estimated Reporting and Recordkeeping "Non-Hour Cost"*

*Burden:* We have not identified any "non-hour cost" burdens associated with this collection of information.

##### III. Request for Comments

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on

respondents, including use of automated information techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: September 18, 2013.

**Madonna L. Baucum,**

*Information Collection Clearance Officer,  
National Park Service.*

[FR Doc. 2013-23063 Filed 9-20-13; 8:45 am]

BILLING CODE 4310-EH-P

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS-WASO-PCE-LWCF-14132;  
PSSSLAD0013.01.4]

#### Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Land and Water Conservation Fund State Assistance Program

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (National Park Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on October 31, 2013. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

**DATES:** You must submit comments on or before October 23, 2013.

**ADDRESSES:** Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB—OIRA at (202) 395-5806 (fax) or *OIRA\_Submission@omb.eop.gov* (email). Please provide a copy of your comments

to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 1849 C Street NW., (2601), Washington, DC 20240 (mail); or [madonna\\_baucum@nps.gov](mailto:madonna_baucum@nps.gov) (email). Please include "1024-0031" in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Elisabeth Fondriest at 202-354-6916 (telephone) or at [Elisabeth\\_Fondriest@nps.gov](mailto:Elisabeth_Fondriest@nps.gov) (email).

You may review the ICR online at <http://www.reginfo.gov>. Follow the instructions to review Department of the Interior collections under review by OMB.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 1024-0031.  
*Title:* Land and Water Conservation Fund State Assistance Program, 36 CFR 59.

*Service Form Numbers:* 10-902, 10-902A, and 10-903.

*Type of Request:* Revision of a currently approved collection.

*Description of Respondents:* States; the Commonwealths of Puerto Rico and the Northern Mariana Islands; the District of Columbia; and the territories of Guam, U.S. Virgin Islands, and American Samoa.

*Number of Respondents:* 56.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* On occasion.

| Activity   | Total annual responses | Completion time per response (hours) | Total annual burden hours |
|--|------------------------|--------------------------------------|---------------------------|
| Statewide Comprehensive Outdoor Recreation Plan .....                      | 11                     | 500                                  | 5,500                     |
| Open Project Selection Process .....                                       | 11                     | 20                                   | 220                       |
| Applications .....   | 250                    | 12                                   | 3,000                     |
| Grant Amendments .....   | 180                    | 6                                    | 1,080                     |
| Conversions of Use .....   | 50                     | 150                                  | 7,500                     |
| Public Facility Requests .....   | 8                      | 16                                   | 128                       |
| Request for Temporary Non-Conforming Uses .....                            | 5                      | 16                                   | 80                        |
| Request for a Significant Change of Use .....                              | 2                      | 16                                   | 32                        |
| Request to Shelter Facilities .....  | 1                      | 16                                   | 16                        |
| Extension of 3-Year Limit for Delayed Outdoor Recreation Development ..... | 5                      | 161                                  | 805                       |
| Onsite Inspection Reports .....  | 4,368                  | 5.5                                  | 24,024                    |
| Financial and Program Performance Reports .....                            | 661                    | 1                                    | 661                       |
| Recordkeeping .....  | 56                     | 40                                   | 2,240                     |
| Requests for Reimbursement/Record of Electronic Payment .....              | 336                    | .5                                   | 168                       |
| <b>Totals .....</b>  | <b>5,944</b>           | <b>.....</b>                         | <b>45,454</b>             |

*Estimated Annual Nonhour Burden Cost:* None.

*Abstract:* The Land and Water Conservation Fund Act of 1965 (LWCF Act) (16 U.S.C. 460/-4 *et seq.*) was enacted to help preserve, develop, and ensure public access to outdoor recreation facilities. The LWCF Act provides funds for and authorizes Federal assistance to the States for planning, acquisition, and development of needed land and water areas and facilities. As used for this information collection, the term "States" includes the 50 States; the Commonwealths of Puerto Rico and the Northern Mariana Islands; the District of Columbia; and the territories of Guam, the U.S. Virgin Islands, and American Samoa.

In accordance with the LWCF Act, we administer the LWCF State Assistance Program, which provides matching grants to States, and through the States to local units of government. The LWCF State Assistance Program gives maximum flexibility and responsibility to the States. States establish their own priorities and criteria and award their grant money through a competitive selection process based on a Statewide recreation plan.

The information collection requirements associated with the LWCF State Assistance Program are currently

approved under five OMB control numbers, all of which expire on October 31, 2013. During our review for this renewal, we identified some other existing collection requirements that have not been approved by OMB. In this revision of 1024-0031, we are including all of the information collection requirements for the LWCF State Assistance Program. If OMB approves this revision, we will discontinue OMB Control Numbers 1024-0032, 1024-0033, 1024-0034, and 1024-0047. The information collection requirements for the LWCF State Assistance Program are discussed in detail in our **Federal Register** notice, February 22, 2013 (78 FR 12349) and the Land and Water Conservation Fund State Assistance Program Federal Financial Assistance Manual, available online at <http://www.nps.gov/ncrc/programs/lwcf/manual/lwcf.pdf>.

*Comments:* On February 22, 2013, we published in the **Federal Register** (78 FR 12349) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on April 23, 2013. We did not receive any comments.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: September 18, 2013.

**Madonna L. Baucum,**  
Information Collection Clearance Officer,  
National Park Service.

[FR Doc. 2013-23064 Filed 9-20-13; 8:45 am]

**BILLING CODE 4310-EH-P**

**DEPARTMENT OF THE INTERIOR****National Park Service**

[NPS-WASO-CONC-13805;  
PPMVSCS1Y.Y00000, PPWOBADCO]

**Notice of Public Meeting: Concessions Management Advisory Board**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Committee Act that the 26th meeting of the Concessions Management Advisory Board (the Board) will be held as indicated below.

**DATES:** The meeting will be held October 30, 2013, at the Department of the Interior Building, 1849 C Street NW., Room 5160, Washington, DC 20240, beginning at 9 a.m. Members of the public are invited to attend. A public comment period will be held.

**FOR FURTHER INFORMATION CONTACT:** Erica Chavis, Concessions Management Specialist, National Park Service, Commercial Services Program, 1201 Eye Street NW., Washington, DC 20005, Telephone: (202) 513-7156.

**SUPPLEMENTARY INFORMATION:** The Board was established by Title IV, Section 409 of the National Parks Omnibus Management Act of 1998, November 13, 1998 (Pub. L. 105-391). The purpose of the Board is to advise the Secretary of the Interior and the National Park Service on matters relating to management of concessions in the National Park System. The members of the Advisory Board are: Dr. James J. Eyster, Ms. Ramona Sakiestewa, Mr. Richard Linford, Mr. Courtland Nelson, and Ms. Michele Michalewicz.

Topics that will be presented during the meeting include:

- General Commercial Services Program Updates
- Concession Contracting Status Update
- Standards, Evaluations, and Rate Approval Project Update
- Simplifying Contract Management and the Proposal Process
- Incentive Programs for Concessioners
- Innovative Visitor Services
- Public Comment—Limited to 3 minutes per person

The meeting will be open to the public; however, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis.

**Assistance to Individuals With Disabilities at the Public Meeting**

The meeting site is accessible to individuals with disabilities. If you plan

to attend and will require an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least 2 weeks before the scheduled meeting date. Attempts will be made to meet any request(s) we receive after that date; however, we may not be able to make the requested auxiliary aid or service available because of insufficient time to arrange for it.

Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time. Such requests should be made to the Director, National Park Service, Attention: Chief, Commercial Services Program, at least 7 days prior to the meeting. Draft minutes of the meeting will be available for public inspection approximately 6 weeks after the meeting, at the Commercial Services Program office located at 1201 Eye Street NW., 11th Floor, Washington, DC.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 17, 2013.

**Marcia Keener,**

*Acting Chief, Office of Policy.*

[FR Doc. 2013-22997 Filed 9-20-13; 8:45 am]

**BILLING CODE 4312-53-P**

**DEPARTMENT OF THE INTERIOR****National Park Service**

[NPS-WASO-NRNHL-14009;  
PPWOCRADI0, PCU00RP14.R50000]

**National Register of Historic Places; Notification of Pending Nominations and Related Actions**

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before August 31, 2013. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the

National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by October 8, 2013. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 6, 2013.

**J. Paul Loether,**

*Chief, National Register of Historic Places/  
National Historic Landmarks Program.*

**COLORADO****Boulder County**

Weiser, Martha, House, 4020 N. 75th St.,  
Boulder, 13000825

**GEORGIA****Chatham County**

Dayton Arms Apartments, 102 E. Liberty St.,  
Savannah, 13000826

**ILLINOIS****Cook County**

Curtiss—Wright Aeronautical University  
Building, 1338-1342 S. Michigan Ave.,  
Chicago, 13000827  
Kosciuszko Park Field House, (Chicago Park  
District MPS), 2732 N. Avers Ave.,  
Chicago, 13000830

**IOWA****Benton County**

Belle Plaine Main Street Historic District,  
Roughly bounded by 7th & 9th Aves., 11th  
& 13th Sts., Belle Plaine, 13000828

**Polk County**

Des Moines Building, (Architectural Legacy  
of Proudfoot & Bird in Iowa MPS), 405 6th  
Ave., Des Moines, 13000829

**Pottawattamie County**

Bregant, Jean and Inez, House, 514 S. 4th St.,  
Council Bluffs, 13000832

**Scott County**

Forest Grove School No. 5, 24040 195th St.,  
Bettendorf, 13000831

**MAINE****Aroostook County**

Daigle, Jean-Baptiste, House, 4 Dube St., Fort  
Kent, 13000833

**Cumberland County**

Webb, John and Maria, House, 121 Main St.,  
Bridgton, 13000834

**Hancock County**

Edgecliff, 34 Norwood Ln., Southwest  
Harbor, 13000835

**MINNESOTA****Otter Tail County**

Fort Juleson, Address Restricted,  
Tordenskjold, 13000836

**MISSOURI****Jackson County**

Plaza House Apartments, (Working-Class and  
Middle-Income Apartment Buildings in  
Kansas City, Missouri MPS), 4712 Roanoke  
Pkwy., Kansas City, 13000837  
Swinney, E.F., School, (Kansas City, Missouri  
School District Pre-1970 MPS), 1106 W.  
47th St., Kansas City, 13000838

**Polk County**

First National Bank, 103 E. Broadway,  
Bolivar, 13000839

**St. Louis Independent City**

National Cash Register Company Sales and  
Repair Building, 1011 Olive St., St. Louis  
(Independent City), 13000840

**UTAH****Tooele County**

Lawrence Brothers and Company Store, 31  
W. Main St., Ophir, 13000842

**Utah County**

Wilkinson, Joseph and Margaret, House,  
(Orem, Utah MPS), 318 South 100 West,  
Orem, 13000843

In the interest of preservation a request has  
been made to shorten the comment period to  
three days for the following resources:

**OHIO****Cuyahoga County**

Westerly Apartments, 14300 Detroit Ave.,  
Lakewood, 13000841

[FR Doc. 2013-22994 Filed 9-20-13; 8:45 am]

**BILLING CODE 4312-51-P**

**DEPARTMENT OF JUSTICE**

[OMB Number 1105-0086]

**Agency Information Collection  
Activities; Proposed Renewal of  
Previously Approved Collection;  
Comments Requested: Attorney  
Student Loan Repayment Program  
Electronic Forms**

**ACTION:** 30-Day notice.

The Department of Justice (DOJ),  
Justice Management Division, Office of  
Attorney Recruitment and Management  
(OARM), will be submitting the  
following information collection request  
to the Office of Management and Budget

(OMB) for review and approval in  
accordance with the Paperwork  
Reduction Act of 1995. Office of  
Management and Budget (OMB)  
approval is sought for the information  
collection listed below. This proposed  
information collection was previously  
published in the **Federal Register**,  
Number 138, page 42974-42975, on July  
18, 2013, allowing for a 60-day public  
comment period.

The purpose of this notice is to allow  
an additional 30 days for public  
comment until October 23, 2013. This  
process is conducted in accordance with  
5 CFR 1320.10.

Written comments and/or suggestions  
regarding the item(s) contained in the  
notice, especially regarding the  
estimated public burden and associated  
response time, should be directed to the  
Office of Management and Budget,  
Office of Information and Regulatory  
Affairs, Attention: Department of Justice  
Desk Officer, Washington, DC 20530.

Additionally, comments may be  
submitted to OMB via facsimile to 202-  
395-7285. Comments may also be  
submitted to Deana Willis, Assistant  
Director, Office of Attorney Recruitment  
and Management, United States  
Department of Justice, Suite 10200, 450  
5th Street NW., Washington, DC 20530.

Written comments and suggestions  
from the public and affected agencies  
should address one or more of the  
following four points:

(1) Evaluate whether the proposed  
collection of information is necessary  
for the proper performance of the  
functions of the agency, including  
whether the information will have  
practical utility;

(2) Evaluate the accuracy of the  
agencies' estimate of the burden of the  
proposed collection of information,  
including the validity of the  
methodology and assumptions used;

(3) Enhance the quality, utility, and  
clarity of the information to be  
collected; and

(4) Minimize the burden of the  
collection of information on those who  
are to respond, including through the  
use of appropriate automated,  
electronic, mechanical, or other  
technological collection techniques or  
other forms of information technology,  
e.g., permitting electronic submission of  
responses.

**Overview of This Information  
Collection**

(1) *Type of information collection:*  
Renewal of a Currently Approved  
Collection.

(2) *The title of the collection:*  
Applications for the Attorney Student  
Loan Repayment Program.

(3) *The agency form number, if any,  
and the applicable component of the  
department sponsoring the collection:*

*Form Number:* 1105-0086. Office of  
Attorney Recruitment and Management,  
Justice Management Division, U.S.  
Department of Justice.

(4) *Affected public who will be asked  
or required to respond, as well as a brief  
abstract:* *Primary:* Individuals or  
households. *Other:* None. The  
Department of Justice Attorney Student  
Loan Repayment Program (ASLRP) is an  
agency recruitment and retention  
incentive program based on 5 U.S.C.  
5379, as amended, and 5 CFR part 537.  
The Department selects participants  
during an annual open season each  
spring. Anyone currently employed as  
an attorney or hired to serve in an  
attorney position within the Department  
may request consideration for the  
ASLRP. The Department selects new  
attorneys each year for participation on  
a competitive basis and renews current  
beneficiaries who remain qualified for  
these benefits, subject to availability of  
funds. There are two types of  
application forms—one is for new  
requests, and the other for renewal  
requests. In addition, there is a three-  
year service agreement form.

(5) *An estimate of the total number of  
respondents and the amount of time  
estimated for an average respondent to  
respond/reply:* The Department  
anticipates that on a yearly basis, about  
225 respondents will complete the  
application for a new request. In  
addition, each year the Department  
expects to receive approximately 175  
applications from attorneys and law  
clerks requesting renewal of the benefits  
they received in previous years. It is  
estimated that each new application  
will take one (1) hour to complete, and  
each renewal application approximately  
15 minutes to complete.

(6) *An estimate of the total public  
burden (in hours) associated with the  
collection:* The total estimated annual  
public burden associated with this  
collection is 269 hours.

If additional information is required,  
contact Jerri Murray, Department  
Clearance Officer, United States  
Department of Justice, Justice  
Management Division, Policy and  
Planning Staff, Two Constitution  
Square, 145 N Street NE., Room 1407-  
B, Washington, DC 20530.

Dated: September 18, 2013.

**Jerri Murray,**

*Department Clearance Officer, PRA, U.S.  
Department of Justice.*

[FR Doc. 2013-23027 Filed 9-20-13; 8:45 am]

**BILLING CODE 4410-PB-P**

## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

[OMB Number 1117-0042]

**Agency Information Collection Activities; Proposed Collection; Comments Requested: National Clandestine Laboratory Seizure Report**

ACTION: 30-Day notice.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 78, Number 135, page 42108, on July 15, 2013, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 23, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Clark R. Fleming, Field Division Counsel, El Paso Intelligence Center, 11339 SSG Sims Blvd., El Paso, TX 79908. Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or fax them to (202) 395-7285. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged.

Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of Information Collection 1117-0042**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* National Clandestine Laboratory Seizure Report.

(3) *Agency form number, if any and the applicable component of the Department sponsoring the collection:*

Form number: EPIC Form 143.

Component: El Paso Intelligence Center, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local or Tribal Government.

Other: None.

Abstract: Records in this system are used to provide clandestine laboratory seizure information to the El Paso Intelligence Center, Drug Enforcement Administration, and other Law enforcement agencies, in the discharge of their law enforcement duties and responsibilities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are one thousand two hundred sixty-seven (1267) total respondents for this information collection. Eight thousand eight hundred seventy-eight (8878) responded using paper at 1 hour a response and four thousand five hundred twenty-four (4524) responded electronically at 1 hour a response, for thirteen thousand four hundred two (13,402) annual responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 13,402 annual burden hours associated with this collection.

*If additional information is required contact:* Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 1407-B, Washington, DC 20530.

Dated: September 18, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013-23028 Filed 9-20-13; 8:45 am]

BILLING CODE 4410-09-P

## DEPARTMENT OF JUSTICE

## Office of Justice Programs

[OMB Number 1121-0030]

**Agency Information Collection Activities; Proposed Collection; Comments Requested; Extension of a Currently Approved Collection: Capital Punishment Report of Inmates Under Sentence of Death**

ACTION: 30-Day notice.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collected is published to obtain comments from the public and affected agencies. The proposed information collected was previously published in the **Federal Register** Volume 78, Number 137, page 42802-42803, on July 17, 2013, allowing a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 23, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden or associated response time, should be directed to The Officer of Management and Budget, Officer of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the Form/Collection:* Capital Punishment Report of Inmates under Sentence of Death.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: NPS-8, Report of Inmates under Sentence of Death; NPS-8A Update Report of Inmate under Sentence of Death; NPS-8B Status of Death Penalty—No Statute in Force; and NPS-8C Status of Death Penalty—Statute in Force. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: State Departments of Corrections and Attorneys General. Others: The Federal Bureau of Prisons. Approximately 104 respondents (2 from each State, the District of Columbia, and the Federal Bureau of Prisons) responsible for keeping records on inmates under sentence of death in their jurisdiction and in their custody will be asked to provide information for the following categories: Condemned inmates' demographic characteristics, legal status at the time of capital offense, capital offense for which imprisoned, number of death sentences imposed, criminal history information, reason for removal and current status if no longer under sentence of death, method of execution, and cause of death by means other than execution. The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, State Officials, international organizations, researchers, students, the media, and others interested in criminal justices statistics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 117 responses at 30 minutes each for the NPS-8; 3,215 responses at 30 minutes each for the NPS-8A; and 52 responses at 15 minutes each for the NPS-8B or NPS-8C.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,679 annual total burden hours associated with the collection.

*If additional information is required contact:* Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Avenue, 145 N Street NE., Room 3W-1407B, Washington, DC 20530.

Dated: September 18, 2013.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2013-23026 Filed 9-20-13; 8:45 am]

**BILLING CODE 4410-18-P**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### **Agency Information Collection Activities; Submission for OMB Review; Comment Request: Certificate of Electrical Training and Applications for Mine Safety and Health Administration Approved Tests and State Tests Administered as Part of a Mine Safety and Health Administration Approved State Program**

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) revision titled, "Certificate of Electrical Training and Applications for Mine Safety and Health Administration Approved Tests and State Tests Administered as Part of a Mine Safety and Health Administration Approved State Program," to the Office of Management and Budget (OMB) for review and approval for use, in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

**DATES:** Submit comments on or before October 23, 2013.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden

may be obtained free of charge from the RegInfo.gov Web site at [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201304-1219-001](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201304-1219-001) (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or sending an email to [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202-395-6881 (this is not a toll-free number), email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Commenters are encouraged, but not required, to send a courtesy copy of any comments to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Information Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210, email: [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

#### **FOR FURTHER INFORMATION CONTACT:**

Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** Instructors use MSHA Form 5000-1, "Certificate of Electrical Training," to report the qualification of persons satisfactorily completing a coal mine electrical training program course to the MSHA. This ICR has been classified as a revision, because the Agency is now incorporating applications for MSHA approved tests and for State tests administered as part of a MSHA approved State program into the ICR. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 31, 2013 (78 FR 32691).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219-0001. The current approval is scheduled to expire on

October 31, 2013; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219-0001. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* DOL-MSHA.

*Title of Collection:* Certificate of Electrical Training and Applications for Mine Safety and Health Administration Approved Tests and State Tests Administered as Part of a Mine Safety and Health Administration Approved State Program.

*OMB Control Number:* 1219-0001.

*Affected Public:* State, Local, and Tribal Governments and Private Sector—business or other for-profits.

*Total Estimated Number of Respondents:* 2,350.

*Total Estimated Number of Responses:* 2,350.

*Total Estimated Annual Burden Hours:* 995.

*Total Estimated Annual Other Costs Burden:* \$731.

Dated: September 16, 2013.

**Michel Smyth,**  
*Departmental Clearance Officer.*

[FR Doc. 2013-22964 Filed 9-20-13; 8:45 am]

**BILLING CODE 4510-43-P**

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Operations Under Water

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, "Operations Under Water," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

**DATES:** Submit comments on or before October 23, 2013.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201305-1219-002](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201305-1219-002) (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or sending an email to [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202-395-6881 (this is not a toll-free number), email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Commenters are encouraged, but not required, to send a courtesy copy of any comments to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Information Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210, email: [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**FOR FURTHER INFORMATION CONTACT:** Contact Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** Regulations 30 CFR 7516.1 and .3 require coal mine operators to obtain a permit to mine under a body of water that is sufficiently large enough to constitute a hazard to miners and

outline the procedural requirements for obtaining the permit. This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219-0020.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on October 31, 2013. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. It should also be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 24, 2013 (78 FR 31598).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219-0020. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–MSHA.

Title of Collection: Operations Under Water.

OMB Control Number: 1219–0020.

Affected Public: Private Sector—business or other for-profits.

Total Estimated Number of

Respondents: 70.

Total Estimated Number of Responses: 70.

Total Estimated Annual Burden Hours: 385.

Total Estimated Annual Other Costs Burden: \$1,060.

Dated: September 16, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–22955 Filed 9–20–13; 8:45 am]

BILLING CODE 4510–43–P

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–2013

#### Extension:

Rule 602, SEC File No. 270–404, OMB Control No. 3235–0461

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget (“OMB”) a request for approval of the extension of the previously approved collection of information provided for in Rule 602 of Regulation NMS (17 CFR 240.602), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 602 of Regulation NMS, Dissemination of Quotations in NMS securities, contains two related collections. The first collection of information is found in Rule 602(a).<sup>1</sup> This third-party disclosure requirement obligates each national securities exchange and national securities association to make available to quotation vendors for dissemination to the public the best bid, best offer, and aggregate quotation size for each “subject security,” as defined under the Rule. The second collection of information is found in Rule 602(b).<sup>2</sup>

This disclosure requirement obligates any exchange member and over-the-counter (“OTC”) market maker that is a “responsible broker or dealer,” as defined under the Rule, to communicate to an exchange or association their best bids, best offers, and quotation sizes for subject securities.<sup>3</sup>

It is anticipated that 17 respondents, consisting of 16 national securities exchanges and one national securities association, will collectively respond approximately 839,944,682,631 times per year pursuant to Rule 602(a) at 18.22 microseconds per response, resulting in a total annual burden of approximately 4,250 hours.

It is anticipated that approximately 150 respondents, consisting of OTC market makers, will collectively respond approximately 28,200,000 times per year pursuant to Rule 602(b) at 3 seconds per response, resulting in a total annual burden of approximately 23,500 hours.

Thus, the aggregate third-party disclosure burden under Rule 602 is 27,750 hours annually which is comprised of 4,250 hours relating to Rule 602(a) and 23,500 hours relating to Rule 602(b).

Compliance with Rule 602 of Regulation NMS is mandatory and the information collected is made available to the public.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington,

<sup>3</sup> Under Rule 602(b)(5), electronic communications networks (“ECNs”) have the option of reporting to an exchange or association for public dissemination, on behalf of customers that are OTC market makers or exchange market makers, the best-priced orders and the full size for such orders entered by market makers on the ECN, to satisfy such market makers’ reporting obligation under Rule 602(b). Since this reporting requirement is an alternative method of meeting the market makers’ reporting obligation, and because it is directed to nine or fewer persons (ECNs), this collection of information is not subject to OMB review under the Paperwork Reduction Act (“PRA”).

DC 20549, or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

September 17, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–23011 Filed 9–20–13; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available

From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

#### Extension:

Form N–CSR; OMB Control No. 3235–0570, SEC File No. 270–512

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the “Commission”) has submitted to the Office of Management and Budget (“OMB”) a request for extension of the previously approved collection of information discussed below.

Form N–CSR (17 CFR 249.331 and 274.128) is a combined reporting form used by registered management investment companies (“funds”) to file certified shareholder reports under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (“Investment Company Act”) and the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (“Exchange Act”). Specifically, Form N–CSR is to be used for reports under section 30(b)(2) of the Investment Company Act (15 U.S.C. 80a–29(b)(2)) and section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) and 78o(d)), filed pursuant to rule 30b2–1(a) under the Investment Company Act (17 CFR 270.30b2–1(a)). Reports on Form N–CSR are to be filed with the Securities and Exchange Commission (“Commission”) no later than 10 days after the transmission to stockholders of any report that is required to be transmitted to stockholders under rule 30e–1 under the Investment Company Act (17 CFR 270.30e–1).

Form N–CSR is filed semi-annually, and the Commission estimates that there are 3,288 respondents. The Commission also estimates that the average number of portfolios referenced in each filing is 3.75. The Commission further estimates that the hour burden for preparing and filing a report on Form N–CSR is 7.21

<sup>1</sup> 17 CFR 242.602(a).

<sup>2</sup> 17 CFR 242.602(b).

hours per portfolio. Given that filings on Form N-CSR are filed semi-annually, filings on Form N-CSR require 14.42 hours per portfolio each year. The total annual hour burden for Form N-CSR, therefore, is estimated to be 177,799 hours. The estimated total annual cost burden to respondents for outside professionals associated with the collection of data relating to Form N-CSR is \$3,189,771.

The information collection requirements imposed by Form N-CSR are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: September 17, 2013.

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2013-23012 Filed 9-20-13; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70429; File No. S7-24-89]

### Joint Industry Plan; Notice of Filing of Amendment No. 30 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis Submitted by the BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

September 17, 2013.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on September 9, 2013, the operating committee ("Operating Committee" or "Committee")<sup>3</sup> of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis ("Nasdaq/UTP Plan" or "Plan") filed with the Securities and Exchange Commission ("Commission") an amendment to the Plan.<sup>4</sup> This amendment represents Amendment No.

30 ("Amendment No. 30")<sup>5</sup> to the Plan and proposes to remove odd-lot transactions from the list of transactions that are not to be reported for inclusion on the consolidated tape. The Commission is publishing this notice to solicit comments from interested persons.

#### I. Rule 608(a)

##### A. Purpose of the Amendments

Currently, Section XIII(B) (Transaction Reports) of the Nasdaq/UTP Plan provides that "Each Participant shall, during the time it is open for trading, be responsible promptly to collect and transmit to the Processor Transaction Reports in Eligible Securities executed in its Market by means prescribed herein." However, that section goes on to say that "The following types of transactions are not required to be reported to the Processor pursuant to the Plan." That list includes odd-lot transactions.

Because odd-lot transactions account for a not insignificant percentage of trading volume, the Participants have determined that including odd-lot transactions on the consolidated tape of Nasdaq/UTP Plan last sale prices would add post-trade transparency to the marketplace.

This amendment proposes to add odd-lot transactions to the consolidated tape by removing them from Section XIII(B)'s list of transactions that are not required to be reported for inclusion on the consolidated tape.

Due to the lack of economic significance of many individual odd-lot orders, the Participants do not propose to include odd-lot transactions in calculations of last sale prices. Therefore, odd-lot transactions would not be included in calculations of high and low prices and would not be subject to Limit Up/Limit Down rules. Similarly, including odd-lot transactions on the consolidated tape would not trigger short sale restrictions or trading halts. However, odd-lot transactions would be included in calculations of daily consolidated volume.

<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> The Plan Participants (collectively, "Participants") are the: BATS Exchange, Inc.; BATS Y-Exchange, Inc.; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX LLC; Nasdaq Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE MKT LLC; and NYSE Arca, Inc.

<sup>4</sup> The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. See Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 20891 (April 26, 2007).

<sup>5</sup> The proposal was originally designated as Amendment No. 31. See Letter from Thomas P. Knorr, Chairman, Nasdaq/UTP Plan Operating Committee to Elizabeth M. Murphy, Secretary, Commission, dated September 9, 2013 ("Transmittal Letter"). On September 17, 2013, the Participants filed a letter to re-designate the proposal as Amendment No. 30 and to correct a marking error in the Plan language. See Letter from Thomas P. Knorr, Chairman, Nasdaq/UTP Plan Operating Committee to Katherine A. England, Assistant Director, Division of Trading and Markets, Commission, dated September 17, 2013.

For purposes of allocating revenue among the Participants under the Nasdaq/UTP Plan, the Participants would include odd-lot transactions in the Security Income Allocation for each Eligible Security under Paragraph 2 (Security Income Allocation) of Exhibit 1 to the Nasdaq/UTP Plan. Just as with round lot transactions, an odd-lot transaction with a dollar value of \$5000 or more would constitute one qualified transaction report and an odd-lot transaction with a dollar value of less than \$5000 would constitute a fraction of a qualified transaction report that equals the dollar value of the transaction report divided by \$5000. The Participants do not anticipate that this will produce a significant shift in revenue allocation among the Participants. This treatment of odd-lot transactions for revenue allocation purposes does not require a change to the language of Exhibit 1 to the Nasdaq/UTP Plan.

*B. Governing or Constituent Documents*  
Not applicable.

*C. Implementation of Amendment*

All of the Participants have manifested their approval of the proposed amendment by means of their execution of the amendments. Subject to Commission approval of the Amendment, the Participants intend to add odd-lot transactions to the consolidated tape under the Plan commencing October 21, 2013.

*D. Development and Implementation Phases*

Not applicable.

*E. Analysis of Impact on Competition*

The proposed amendment does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. This change is being proposed and implemented in parallel with similar changes to the national market system plan governing the trading of stocks listed on NYSE, Amex, and other markets (*i.e.*, the CTA Plan). The Participants do not believe that the proposed plan amendment introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act.<sup>6</sup>

*F. Written Understanding or Agreements relating to Interpretation of, or Participation in, Plan*

The Participants have no written understandings or agreements relating

to interpretation of the Plan as a result of the amendment.

*G. Approval by Sponsors in Accordance with Plan*

Each of the Plan's Participants has executed a written amendment to the Plan.

*H. Description of Operation of Facility Contemplated by the Proposed Amendment*

Not applicable.

*I. Terms and Conditions of Access*

Not applicable.

*J. Method of Determination and Imposition, and Amount of, Fees and Charges*

Not applicable.

*K. Method and Frequency of Processor Evaluation*

Not applicable.

*L. Dispute Resolution*

Not applicable.

**II. Rule 601(a)**

*A. Equity Securities for which Transaction Reports Shall Be Required by the Plan*

Not applicable.

*B. Reporting Requirements*

As a result of the amendment, each Participant would be required to report odd-lot transactions to the Nasdaq/UTP Plan's Processor for inclusion in the consolidated tape.

*C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information*

Not applicable.

*D. Manner of Consolidation*

Odd-lot transactions would not be eligible for inclusion in calculations of last sale prices and would not be included in calculations of high and low prices. However, odd-lot transactions would be included in calculations of daily consolidated volume.

*E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports*

Not applicable.

*F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination*

Not applicable.

*G. Terms of Access to Transaction Reports*

Not applicable.

*H. Identification of Marketplace of Execution*

Not Applicable.

**III. Solicitation of Comments**

The Commission seeks general comments on Amendment No. 30. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-24-89 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number S7-24-89. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all written statements with respect to the proposed Plan Amendment that are filed with the Commission, and all written communications relating to the proposed Plan Amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for Web site viewing and printing at the Office of the Secretary of the Committee, currently located at the CBOE, 400 S. LaSalle Street, Chicago, IL 60605. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number S7-24-89 and should be submitted on or before October 15, 2013.

<sup>6</sup> 15 U.S.C. 78k-1(c)(1)(D).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2013-23010 Filed 9-20-13; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Wednesday, September 25, 2013 at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;  
Institution and settlement of administrative proceedings; and  
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551-5400.

Dated: September 18, 2013.

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2013-23101 Filed 9-19-13; 11:15 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70424; File No. SR-CBOE-2013-088]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Appointment Cost of IWM Options

September 17, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 13, 2013, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the appointment cost for options on the iShares Russell 2000 Index Fund (IWM). The text of the proposed rule change is provided below. (Additions are *italicized*; deletions are [bracketed].)

\* \* \* \* \*

### Chicago Board Options Exchange, Incorporated Rules

\* \* \* \* \*

### Rule 8.3. Appointment of Market-Makers

(a)-(b) No change.

(c) Market-Maker Appointments. Absent an exemption by the Exchange, an appointment of a Market-Maker confers the right to quote electronically and in open outcry in the Market-Maker's appointed classes as described below. Subject to paragraph (e) below, a Market-Maker may change its appointed classes upon advance notification to the Exchange in a form and manner prescribed by the Exchange.

(i) Hybrid Classes. Subject to paragraphs (c)(iv) and (e) below, a Market-Maker can create a Virtual Trading Crowd ("VTC") appointment, which confers the right to quote electronically in an appropriate number of Hybrid classes (as defined in Rule 1.1(aaa)) selected from "tiers" that have been structured according to trading volume statistics, except for the AA tier. All classes within a specific tier will be assigned an "appointment cost" depending upon its tier location. The following table sets forth the tiers and related appointment costs.

| Tier    | Hybrid options classes  | Appointment cost  |
|---------|---|---|
| AA ...  | <ul style="list-style-type: none"> <li>Options on the CBOE Volatility Index (VIX) ..... .</li> <li>Options on the iShares Russell 2000 Index Fund (IWM) ..... .</li> <li>Options on the NASDAQ 100 Index (NDX) ..... .</li> <li>Options on the S&amp;P 100 (OEX) ..... .</li> <li>Options on Standard &amp; Poor's Depositary Receipts (SPY) ..... .</li> <li>Options on the Russell 2000 Index (RUT) ..... .</li> <li>Options on the S&amp;P 100 (XEO) ..... .</li> <li>Morgan Stanley Retail Index Options (MVR) ..... .</li> <li>Options on the iPath S&amp;P 500 VIX Short-Term Futures Index ETN (VXX) ..... .</li> <li>P.M.—Settled options on the Standard &amp; Poor's 500 (SPXPM) ..... .</li> </ul> | .50<br>[.50].25<br>.50<br>.40<br>.25<br>.25<br>.10<br>.25<br>.10<br>1.0 |
| A* ...  | Hybrid Classes 1-60 ..... .   | .10   |
| B* ...  | Hybrid Classes 61-120 ..... .   | .05   |
| C* ...  | Hybrid Classes 121-345 ..... .  | .04   |
| D* ...  | Hybrid Classes 346-570 ..... .  | .02   |
| E* ...  | Hybrid Classes 571-999 ..... .  | .01   |
| F* .... | All Remaining Hybrid Classes ..... .  | .001  |

\* Excludes Tier AA.

<sup>7</sup> 17 CFR 200.30-3(a)(27).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

- (ii)–(vi) No change.  
(d)–(e) No change.

\* \* \* \* \*

The text of the proposed rule change is also available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange proposes to amend the appointment cost for options on the iShares Russell 2000 Index Fund (IWM). IWM options are part of Tier AA and have a fixed appointment cost of .50. The Exchange proposes to lower the appointment cost of IWM options to .25. While the appointment costs of Tier AA classes are not subject to quarterly rebalancing under Rule 8.3(c)(iv), the Exchange regularly reviews the appointment costs of Tier AA classes to ensure that they continue to be appropriate. The Exchange determines appointment costs of Tier AA classes based on several factors, including competitive forces and trading volume.<sup>3</sup> The Exchange believes that the reduced appointment cost of IWM options is consistent with its most recent analysis of these factors. The Exchange believes that lowering the appointment cost of IWM options will encourage Market-Makers to select appointments in that class, and thus enhance competition in that class. Additionally, the Exchange believes the lower appointment cost will similarly promote competition in other classes, as Market-Makers can utilize the excess appointment credit of .25 to select an appointment and quote electronically in additional Hybrid

option classes. The proposed rule change will become effective on September 17, 2013.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>4</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>5</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that lowering the appointment cost of IWM options will encourage Market-Makers to select appointments in that class, which may increase liquidity and enhance competition in that class. Additionally, the Exchange believes the lower appointment cost will similarly promote competition in other classes, as Market-Makers can utilize the excess appointment credit of .25 to select an appointment and quote electronically in additional Hybrid option classes. The Exchange believes this may result in more competitive pricing in IWM and other Hybrid option classes, which will promote just and equitable principles of trade and ultimately benefit investors. The proposed rule change does not result in unfair discrimination, as the lower appointment cost for IWM options will apply to all Market-Makers.

### B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The lower appointment cost for IWM options will apply to all Market-Makers. Any

Market-Maker may select an appointment in IWM options at the lower appointment cost as long as it has sufficient appointment credits to cover the cost. CBOE does not believe the proposed rule change will detriment market participants on other exchanges, as it relates solely to Market-Maker appointment costs of options classes listed on CBOE. Market participants on other exchanges are welcome to become CBOE Trading Permit Holders as Market-Makers and trade at CBOE if they determine that this proposed rule change has made CBOE more attractive or favorable.

CBOE believes that the proposed rule change will relieve any burden on, or otherwise promote, competition. As discussed above, the Exchange believes the lower appointment cost for IWM options will promote competition in IWM options and other option classes.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>9</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>10</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may

<sup>3</sup> Similarly, the appointment costs of classes in all tiers other than Tier AA are based on trading volume statistics. See Rule 8.3(c)(i).

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> *Id.*

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> *Id.*

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

become operative immediately upon filing. According to the Exchange, the proposed rule change lowers an appointment cost, so it will not cause any Market-Maker to be out of compliance with the rules. The Exchange stated that waiving the 30-day operative delay period will allow Market-Makers with an appointment in IWM to obtain appointments in additional options classes in which they want to make markets as soon as possible and thus promote competition in those classes without undue delay. Based on the Exchange's statements, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.<sup>11</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>12</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2013-088 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2013-088. This file number should be included on the

subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549-1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2013-088 and should be submitted on or before October 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-23005 Filed 9-20-13; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70425; File No. SR-NYSEArca-2013-90]

#### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 6.91 To Specify That LMMs Receive Execution Allocations of Incoming Electronic Complex Orders and Complex Order Auction Eligible Orders in Accordance With the Guaranteed Participation Provision of Rule 6.76A(a)(1)(A), Without Any Exceptions**

September 17, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the

"Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 12, 2013, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Rule 6.91 to specify that LMMs receive execution allocations of incoming Electronic Complex Orders and Complex Order Auction ("COA") eligible orders in accordance with the guaranteed participation provision of Rule 6.76A(a)(1)(A), without any exceptions. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The Exchange is proposing to amend Rules 6.91(a)(2)(i), (a)(2)(ii), (c)(6)(A), and (c)(6)(D) to specify that LMMs receive execution allocations of the individual components of a legged out incoming Electronic Complex Order or COA-eligible order in accordance with the guaranteed participation provision of Rule 6.76A(a)(1)(A), without any exceptions, which is how the Exchange currently operates.

<sup>11</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

Rule 6.91 governs trading of “Electronic Complex Orders,” as that term is defined in NYSE Arca Options Rule 6.62(e).<sup>4</sup> Rule 6.91(a)(2)(i) currently provides that Electronic Complex Orders accepted in the Exchange’s Complex Matching Engine (“CME”)<sup>5</sup> are executed automatically against other Electronic Complex Orders in the Consolidated Book,<sup>6</sup> unless individual orders or quotes in the Consolidated Book can execute against incoming Electronic Complex Orders, subject to specified conditions, in which case such individual orders and quotes have priority. Rule 6.91(a)(2)(ii) currently provides that Electronic Complex Orders in the CME that are not marketable against other Electronic Complex Orders automatically execute against individual quotes or orders in the Consolidated Book, provided that the Electronic Complex Orders can be executed in full or in a permissible ratio by the individual quotes or orders.

Rule 6.91(c) governs the electronic COA process, and specifically, Rule 6.91(c)(6) governs the execution of COA-eligible orders.<sup>7</sup> Upon receiving a COA-eligible order and a request by the OTP Holder representing the order that an auction be initiated, the Exchange sends an automated request for responses (“RFR”) message to OTP Holders with an interface connection to the Exchange that have elected to receive such RFR messages. Market Makers with an appointment in the relevant options class, and OTP Holders acting as agent for orders resting at the top of the

Consolidated Book in the relevant options series, may electronically submit responses (“RFR Responses”), and modify, but not withdraw, the RFR response at anytime during the request response time interval (the “Response Time Interval”). When the Response Time Interval expires, the COA-eligible order is executed and allocated to the extent it is marketable, or routed to the Consolidated Book to the extent it is not marketable.

Rule 6.91(c)(6) provides that COA-eligible orders are executed against the best priced contra-side interest, and provides an allocation process for orders at the same net price. Rule 6.91(c)(6)(A) currently provides that individual orders and quotes in the leg markets resting in the Consolidated Book prior to the initiation of a COA will have first priority to trade against a COA-eligible order, provided that the COA-eligible order can be executed in full (or in a permissible ratio) by the orders and quotes in the Consolidated Book. Rule 6.91(c)(6)(D) currently provides that individual orders and quotes in the leg markets that cause the derived Complex Best Bid/Offer to be improved during the COA and match the best RFR Response and/or Electronic Complex Orders received during the Response Time Interval will be filled after Electronic Complex Orders and RFR Responses at the same net price. Allocations to individual orders or quotes in the leg markets that cause the derived BBO to be improved occur on a Customer/order/size pro rata basis.

Under Rules 6.91(a)(2)(i) and (a)(2)(ii), incoming orders or quotes, or those residing in the Consolidated Book, that execute against Electronic Complex Orders are allocated pursuant to Rule 6.76A. Additionally, under Rules 6.91(c)(6)(A) and (c)(6)(D), individual orders or quotes residing in the Consolidated Book that execute against a COA-eligible order are allocated pursuant to Rule 6.76A. Rule 6.76A(a)(1)(A) grants LMMs guaranteed participation, which means that if an LMM is quoting at a price equal to the National Best Bid or Offer (“NBBO”) in an option series that the LMM is assigned, incoming bids and offers in that series will, depending on order ranking provisions of Rule 6.76A, be matched against the LMM’s quote, up to specified thresholds.<sup>8</sup> Currently, Rules 6.91(a)(2)(i), (a)(2)(ii), (c)(6)(A), and (c)(6)(D) provide that the LMM guaranteed participation afforded in

Rule 6.76A(a)(1)(A) will not apply to executions against an Electronic Complex Order or a COA-eligible order. However, Exchange systems do apply the LMM guaranteed participation afforded in Rule 6.76A(a)(1)(A) to Electronic Complex Orders and COA-eligible orders that execute against individual quotes and orders in the Consolidated Book.

The Exchange is proposing to amend Rules 6.91(a)(2)(i), (a)(2)(ii), (c)(6)(A), and (c)(6)(D) to specify that LMMs receive execution allocations of incoming Electronic Complex Orders and COA-eligible orders in accordance with the guaranteed participation provision of Rule 6.76A(a)(1)(A), without any exceptions.<sup>9</sup> The proposed change would codify existing processing of Electronic Complex Orders that leg out to the individual markets and how they may interact with the LMM in the individual markets.

The Exchange notes that under the proposed amendment to Rule 6.91 the execution of an Electronic Complex Order against another Electronic Complex Order in the Consolidated Book would not result in a guaranteed participation for an LMM. Rather, the guaranteed participation provision of that rule is only applicable if an Electronic Complex Order legs out individual components to trade with the quotes of an LMM.

The Exchange believes that it is appropriate to provide LMMs with guaranteed participation in relation to execution allocations of the individual components of an Electronic Complex Order. The guaranteed participation strikes a reasonable balance between rewarding certain participants for making markets, and providing other market participants an incentive to quote aggressively.<sup>10</sup> Although Exchange rules did not originally afford LMMs any guaranteed participation when a Complex Order executes against the individual leg markets, the Exchange believes that permitting such guaranteed participation will further incentivize the provision of liquidity

<sup>4</sup> NYSE Arca Options Rule 6.62(e) defines an Electronic Complex Order as “any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.”

<sup>5</sup> NYSE Arca Options Rule 6.91(a) defines the CME as “the mechanism in which Electronic Complex Orders are executed against each other or against individual quotes and orders in the Consolidated Book.”

<sup>6</sup> NYSE Arca Options Rule 6.1(b)(37) defines the Consolidated Book as “the Exchange’s electronic book of limit orders for the accounts of Public Customers and broker-dealers, and Quotes with Size. All orders and Quotes with Size that are entered into the Book will be ranked and maintained in accordance with the rules of priority as provided in Rule 6.76. There is no limit to the size of orders or quotes that may be entered into the Consolidated Book.”

<sup>7</sup> Rule 6.91(c)(1) defines a COA-eligible order as “an Electronic Complex Order that, as determined by the Exchange on a class-by-class basis, is eligible for a COA considering the order’s marketability (defined as a number of ticks away from the current market), size, number of series, and complex order origin types (i.e., Customers, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-Makers or specialists on an options exchange).”

<sup>8</sup> Rule 6.76A(1)(A) also provides for guaranteed participation for Directed Order Market Makers; however, there are not currently any Directed Order Market Makers on NYSE Arca.

<sup>9</sup> The Exchange will announce, via Trader Update, the allocation process when an Electronic Complex Order legs out to the individual markets.

<sup>10</sup> See Exchange Act Release No. 59472 (Feb. 27, 2009), 74 FR 9843, 9847 (Mar. 6, 2009) (SR-NYSEALTR-2008-14) (“The Commission has also previously approved Specialist Pool participations of up to 40% of the size of incoming orders (after any Customer Orders have been satisfied and only when the Directed Order guarantee has not been applied), provided that the Specialist Pool is quoting at the NBBO when the order is received by the Exchange. The Commission believes that these guarantees strike a reasonable balance between rewarding certain participants for making markets . . . , with providing other market participants an incentive to quote aggressively.”)

that is aggressively priced. Therefore, the Exchange believes it is reasonable to provide LMMs with guaranteed participations whether the contra-side order is a leg of an Electronic Complex Order or an individual order. The Exchange notes that the proposed rule change is consistent with the allocation process for executing Complex Orders against individual orders and quotes on the Chicago Board Options Exchange ("CBOE") and NASDAQ OMX PHLX LLC ("PHLX").<sup>11</sup>

The Exchange notes, moreover, that to receive a guaranteed participation, the LMM is subject to heightened quoting obligations. An LMM must provide continuous two-sided quotations throughout the trading day in its appointed issues for 90% of the time the Exchange is open for trading in each issue.<sup>12</sup>

Finally, the Exchange also believes that eliminating the inconsistency between Rule 6.76A and Rule 6.91 with respect to the guarantee will eliminate potential confusion as to whether an LMM is receiving its guaranteed participation when it quotes at a price equal to the NBBO. The Exchange is also proposing a non-substantive, technical amendment to Rule 6.91(a)(2)(ii) to fix a typographical error.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>14</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that providing the guaranteed participation allocation for LMMs for the execution of incoming Electronic Complex Orders and COA-eligible orders removes impediments to, and perfects the mechanism of a free and open market by (1) promoting liquidity on the Exchange because LMM quotes interact with incoming Electronic Complex Orders and COA-eligible orders, (2) providing consistency among Exchange rules by applying the same allocation logic to the execution of incoming Electronic Complex Orders/COA-eligible orders and single-leg orders, and (3) eliminating potential confusion with

respect to guaranteed participation for LMMs trading in Electronic Complex Orders. Additionally, the Exchange believes that the proposal is designed to protect investors and the public interest because the proposed rule change is consistent with the allocation process for executing Complex Orders against individual orders and quotes on CBOE and PHLX. The Exchange further believes that the proposal will promote liquidity on the Exchange because the LMM guaranteed participation strikes a reasonable balance between rewarding certain participants for making markets, and providing other market participants an incentive to quote aggressively.

## B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose a significant burden on competition; instead, the Exchange believes the proposed rule change will enhance competition by increasing liquidity in the options market. By permitting the guaranteed participation allocation with respect to Electronic Complex Orders and COA-eligible orders, LMMs are encouraged to quote at the NBBO in their assigned options series, which increases the level of liquidity in the options market. While allocations due to guaranteed participations may direct order flow to particular participants, the Commission has previously approved such allocations as a reasonable balance between rewarding such participants for making markets, and providing other market participants an incentive to quote aggressively.<sup>15</sup> By allocating 40 percent of the order to LMMs, the Exchange believes that it properly incentivizes the provision of liquidity from LMMs, while still ensuring that other market participants are able to participate and receive allocations.

In addition, eliminating the current exception from the guaranteed participation allocation will also provide consistency and eliminate potential confusion concerning guaranteed participation allocation for LMMs with respect to Electronic Complex Orders and COA-eligible orders. Further, the Exchange does not believe the proposal will impose a significant burden on competition since the proposal is consistent with the allocation process on CBOE and PHLX.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6)<sup>17</sup> thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>18</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2013-90 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

<sup>11</sup> See CBOE Rules 6.53C(c)(ii)(2), 6.53C(d)(v)(1), 6.45A(a)(i)(C), and 6.45B(a)(ii)(C) and Commentaries .08(e)(vi)(A)(1) and .08(f)(iii) to PHLX Rule 1080 and PHLX Rule 1014(g)(vii).

<sup>12</sup> See Rule 6.37B(b).

<sup>13</sup> 15 U.S.C. § 78f(b).

<sup>14</sup> 15 U.S.C. § 78f(b)(5).

<sup>15</sup> See 74 FR at 9847.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>18</sup> 15 U.S.C. 78s(b)(2)(B).

100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number *SR-NYSEArca-2013-90*. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR-NYSEArca-2013-90* and should be submitted on or before October 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2013-23006 Filed 9-20-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70426; File No. *SR-Topaz-2013-04*]

### Self-Regulatory Organizations; Topaz Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Schedule of Fees September 17, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup>

notice is hereby given that on September 3, 2013, the Topaz Exchange, LLC (the "Exchange" or "Topaz") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Topaz is proposing to amend its Schedule of Fees to adopt volume-based tiered rebates for adding liquidity on the Exchange ("Maker Rebate"), and to increase the rebate for certain participant types in Non-Penny Symbols. The text of the proposed rule change is available on the Exchange's Web site, at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Topaz is proposing to amend its Schedule of Fees to establish volume-based rebates for adding liquidity in Regular Orders<sup>3</sup> traded on the Exchange. The Exchange believes the proposed rebates will incentivize firms that route orders to Topaz to increase order flow to the Exchange. The Exchange is also proposing to increase the rebates applicable to Non-Topaz Market Maker,<sup>4</sup> Firm Proprietary/

Broker-Dealer,<sup>5</sup> and Professional Customer<sup>6</sup> orders in Non-Penny Symbols.<sup>7</sup>

For Regular Orders in Penny Symbols<sup>8</sup> and SPY the Exchange currently pays a Maker Rebate in Standard Options of \$0.48 per contract for Priority Customer orders,<sup>9</sup> \$0.37 per contract (\$0.39 per contract in SPY) for Market Maker orders,<sup>10</sup> and \$0.25 per contract for Non-Topaz Market Maker, Firm Proprietary/Broker-Dealer, and Professional Customer orders. For Regular Orders in Non-Penny Symbols, the Exchange currently pays a Maker Rebate in Standard Options of \$0.82 per contracts for Priority Customer orders, \$0.40 per contract for Market Maker orders, and \$0.10 per contract for Non-Topaz Market Maker, Firm Proprietary/Broker-Dealer, and Professional Customer orders. For Regular Orders in Mini Options,<sup>11</sup> Maker Rebates are 1/10th the rate applicable in Standard Options.

The Exchange proposes to amend the rebates described above so that Maker Rebates will be based on a Member's average daily volume ("ADV") in a given month.<sup>12</sup> In particular, the Exchange proposes to pay a Maker Rebate based on four volume tier levels as described in the table below. Members may qualify for each tier based on their volume in the following categories: (i) Total Affiliated Member ADV,<sup>13</sup> (ii) Priority Customer Maker ADV, or (iii) Total Affiliated Member ADV with a Minimum Priority Customer Maker ADV. For example, a Member can reach Tier 2 by sending 65,000 contracts in Total Affiliated Member ADV, 20,000 contracts in Priority Customer Maker ADV, or 40,000

<sup>5</sup> A Firm Proprietary order is an order submitted by a Member for its own proprietary account. A Broker-Dealer order is an order submitted by a Member for a non-Member broker-dealer account.

<sup>6</sup> A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

<sup>7</sup> Non-Penny Symbols are options overlying all symbols excluding Penny Symbols.

<sup>8</sup> Penny Symbols are options overlying all symbols listed on Topaz that are in the Penny Pilot Program.

<sup>9</sup> A Priority Customer is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

<sup>10</sup> The term Market Maker refers to "Competitive Market Makers" and "Primary Market Makers" collectively. Market Maker orders sent to the Exchange by an Electronic Access Member are assessed fees and rebates at the same level as Market Maker orders. See footnote 2, Schedule of Fees, Section I and II.

<sup>11</sup> Mini Options are options overlying ten (10) shares of AAPL, AMZN, GLD, GOOG and SPY.

<sup>12</sup> ADV includes all volume in all symbols and order types.

<sup>13</sup> The Total Affiliated Member ADV category includes all volume in all symbols and order types.

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> A Regular Order is an order that consists of only a single option series and is not submitted with a stock leg.

<sup>4</sup> A Non-Topaz Market Maker, or Far Away Market Maker ("FarMM"), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

contracts in Total Affiliated Member ADV of which 15,000 contracts is Priority Customer Maker volume.

Maker Rebates will be paid based on the highest tier that a Member reaches

in a given month, and this tiered rate will apply retroactively to all eligible traded contracts for all client categories.

This means, for example, a Member with an ADV of 115,000 Priority

Customer Maker contracts would also qualify for the highest rebate tier for all Market Maker volume it trades on the Exchange that provides liquidity.

#### QUALIFYING TIER THRESHOLDS

| Tier         | Total affiliated member ADV | Priority customer maker ADV | Total affiliated member ADV/minimum priority customer maker ADV |
|--------------|-----------------------------|-----------------------------|---|
| Tier 1 ..... | 0–64,999                    | 0–19,999                    | 0–39,999/0+   |
| Tier 2 ..... | 65,000–149,999              | 20,000–64,999               | 40,000–114,999/15,000+  |
| Tier 3 ..... | 150,000–274,999             | 65,000–114,999              | 115,000–224,999/45,000+   |
| Tier 4 ..... | 275,000+                    | 115,000+                    | 225,000+/65,000+  |

Volume in Standard Options and Mini Options will be combined to calculate the tier a Member has reached. For example, a Member can reach Tier 2 under Total Affiliated Member ADV by sending an ADV of 50,000 contracts in Standard Options and 15,000

contracts in Mini Options. Based on the tier achieved, the Member will be rebated for that tier for all the Standard Options traded at the Standard Option rebate amount, and for all the Mini Options traded at the Mini Option rebate amount. In addition, all eligible

volume from affiliated Topaz Members will be aggregated in determining applicable tiers.<sup>14</sup>

The proposed Maker Rebates for each tier and participant type are as follows:

#### I. REGULAR ORDER REBATES FOR ADDING LIQUIDITY IN STANDARD OPTIONS

| Tier  | Priority customer | Topaz market maker | Firm proprietary, B/D, FarMM & professional customer |
|---|-------------------|--------------------|--|
| <b>Penny Symbols and SPY Maker Rebates (per contract)</b> |                   |                    |  |
| Tier 1 .....  | (\$0.25)          | (\$0.30)           | (\$0.25)   |
| Tier 2 .....  | (0.40)            | (0.32)             | (0.25)   |
| Tier 3 .....  | (0.45)            | (0.34)             | (0.25)   |
| Tier 4 .....  | (0.48)            | (0.37)             | (0.25)   |
| Tier 4 SPY .....  | (0.48)            | (0.39)             | (0.25)   |
| <b>Non-Penny Symbols Maker Rebates (per contract)</b>     |                   |                    |  |
| Tier 1 .....  | (0.70)            | (0.40)             | (0.25)   |
| Tier 2 .....  | (0.75)            | (0.42)             | (0.25)   |
| Tier 3 .....  | (0.80)            | (0.44)             | (0.25)   |
| Tier 4 .....  | (0.82)            | (0.46)             | (0.25)   |

#### II. REGULAR ORDER REBATES FOR ADDING LIQUIDITY IN MINI OPTIONS

| Tier  | Priority customer | Topaz market maker | Firm proprietary, B/D, FarMM & professional customer |
|---|-------------------|--------------------|--|
| <b>Penny Symbols and SPY Maker Rebates (per contract)</b> |                   |                    |  |
| Tier 1 .....  | (\$0.025)         | (\$0.030)          | (\$0.025)  |
| Tier 2 .....  | (0.040)           | (0.032)            | (0.025)  |
| Tier 3 .....  | (0.045)           | (0.034)            | (0.025)  |
| Tier 4 .....  | (0.048)           | (0.037)            | (0.025)  |
| Tier 4 SPY .....  | (0.048)           | (0.039)            | (0.025)  |
| <b>Non-Penny Symbols Maker Rebates (per contract)</b>     |                   |                    |  |
| Tier 1 .....  | (0.070)           | (0.040)            | (0.025)  |
| Tier 2 .....  | (0.075)           | (0.042)            | (0.025)  |
| Tier 3 .....  | (0.080)           | (0.044)            | (0.025)  |
| Tier 4 .....  | (0.082)           | (0.046)            | (0.025)  |

<sup>14</sup> Each Member would be responsible for notifying the Exchange of its affiliations so that

volume of the Member and its affiliates may be aggregated.

By way of example, under the new tiered rebate structure a Member that executed an ADV of 20,000 Priority Customer contracts in all classes listed on the Exchange that added liquidity in a given month would be entitled to receive the proposed Tier 2 Maker Rebate of \$0.40 per contract for Standard Options and \$0.040 per contract for Mini Options in Penny Symbols. If the Member executed an ADV of 65,000 Priority Customer contracts that added liquidity in the same month, the Exchange would instead pay the proposed Tier 3 Maker Rebate of \$0.45 per contract for Standard Options and \$0.045 per contract for Mini Options in Penny Symbols. The applicable tier reached will similarly affect the maker rebates paid on non-Priority Customer maker volume as reflected in the tables.

The Exchange notes that the Maker Rebates currently being paid on Topaz are equivalent to Tier 4 rebates under the new structure, with a few exceptions. During the initial rollout of symbols on Topaz, the Exchange could not adopt the proposed tiered structure due to the impossibility of calculating appropriate ADV thresholds for each tier when symbols were being listed on the Exchange each week. The Exchange, therefore, opted to provide a higher introductory rate for Maker Rebates in order to attract orders to the Exchange during the initial rollout phase. By adopting the proposed tiered structure now, the Exchange seeks to incentivize Members to send additional order flow to the Exchange in order to qualify for the higher Maker Rebates.

At this time the Exchange is not modifying the Maker Rebates applicable to Non-Topaz Market Maker, Firm Proprietary/Broker-Dealer, or Professional Customer orders in Penny Symbols and SPY. Although the Exchange is adopting a tiered structure for these orders, the amount of the applicable Maker Rebate remains unchanged from current levels of \$0.25 per contract for Standard Options and \$0.025 per contract for Mini Options, regardless of the tier achieved. In order to increase order flow from these market participants in Non-Penny symbols, the Exchange is increasing the Maker Rebate for these market participants so that the rebate is now equivalent to the rebate offered in Penny Symbols and SPY. As such, Non-Topaz Market Maker, Firm Proprietary/Broker-Dealer, and Professional Customer orders in Non-Penny Symbols will be provided an increased Maker Rebate of \$0.25 per contract for Standard Options and \$0.025 per contract for Mini Options, up

from \$0.10 per contract and \$0.010 per contract, respectively.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>15</sup> in general, and Section 6(b)(4) of the Act,<sup>16</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes the proposed rebates are reasonable and equitably allocated because Topaz has already established Maker Rebates for Members that provide liquidity on the Exchange, and is merely proposing to adopt volume-based tiers designed to incentivize Members to send additional order flow to the Exchange. The Exchange believes that the proposed Maker Rebates are not unfairly discriminatory because the rebate structure is competitive with tiered rebate structures that exist today at other options exchanges such as the NASDAQ Options Market ("NOM").<sup>17</sup> For example, NOM provides its members with a rebate for adding liquidity in Penny Symbols that ranges between \$0.25 per contract and \$0.48 per contract for customer and professional orders, and between \$0.25 per contract and \$0.32 per contract for Market Maker orders.<sup>18</sup> As proposed, Topaz will also offer Priority Customers the same range of rebates as currently provided by NOM, and will actually offer more competitive rebates for Market Makers, from \$0.30 per contract for the base tier and as high as \$0.37 per contract for the highest tier. Topaz also compares competitively with respect to the thresholds required to achieve higher levels of rebates. For example, a Member executing an ADV of 275,000 contracts on Topaz would qualify for the highest \$0.48 rebate for Priority Customer orders, whereas the same firm would have to execute an extra 50,000 contracts in ADV to qualify for that level of rebate on NOM. Topaz also does not separate out thresholds for different participant types, meaning that a Member that qualifies for a higher tier in Priority Customer volume would also earn the higher rebate amount for any

Market Maker volume it trades on the Exchange that provides liquidity.

While the Exchange is lowering the current Maker Rebate provided to Members that have not achieved the highest volume tier, the Exchange believes that Members will in fact be incentivized to bring additional order flow to the Exchange to obtain higher rebates. Additionally, the Exchange believes that the proposed Maker Rebates are fair, equitable and not unfairly discriminatory because they are consistent with rebate differentiation that exists today at other option exchanges.

With respect to rebates for Market Makers, the Exchange believes that the price differentiation between the various market participants is appropriate and not unfairly discriminatory because Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements). The Exchange believes that it is equitable and not unfairly discriminatory to provide a lower rebate to market participants that do not have such requirements and obligations that Exchange Market Makers do.

The Exchange also believes that providing higher rebates to Priority Customer orders, and creating ADV thresholds specifically for Members that send such orders to Topaz, attracts that order flow to the Exchange and thereby creates liquidity to the benefit of all market participants who trade on the Exchange. Further, the Exchange believes that it is equitable and not unfairly discriminatory to provide higher rebates to Priority Customer orders than to Professional Customer orders. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). This limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including Professional Customers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers. Further, Professional Customers engage in trading activity similar to that conducted by market makers and proprietary traders. For example, Professional Customers join bids and offers on the Exchange and thus compete for incoming order flow.

The Exchange has determined to charge fees and provide rebates for Regular Orders in Mini Options at a rate

<sup>15</sup> 15 U.S.C. 78f.

<sup>16</sup> 15 U.S.C. 78f(b)(4).

<sup>17</sup> See NASDAQ Options Rules, Chapter XV Options Pricing, Section 2, NASDAQ Options Market—Fees and Rebates.

<sup>18</sup> Both Topaz and NOM provide higher rebates than those listed here for market maker orders in certain specific symbols (e.g. SPY).

that is 1/10th the rate of fees and rebates the Exchange currently provides for trading in Standard Options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees and rebates to provide market participants an incentive to trade Mini Options on the Exchange. The Exchange believes the proposed rebates are reasonable and equitable in light of the fact that Mini Options have a smaller exercise and assignment value, specifically 1/10th that of a standard option contract, and, as such, is providing rebates that are 1/10th of those applicable to Standard Options.

The Exchange notes that the proposed rule filing is intended to establish Topaz as an attractive venue for market participants to direct their order flow as the proposed rebates are competitive with those established by other exchanges. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem rebates at a particular exchange to be too low. For the reasons noted above, the Exchange believes that the proposed rebates are fair, equitable and not unfairly discriminatory.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,<sup>19</sup> the Exchange does not believe that the proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The tiered rebate structure that the Exchange proposes to adopt here is similar to that currently in effect on other maker/taker options exchanges such as NOM,<sup>20</sup> and will increase competition between Topaz and other markets.

In establishing tiered rebates for providing liquidity, the Exchange is not imposing any burden on intra-market competition. The established volume tiers are transparent and offer Members a variety of ways to reach different levels of rebates on the exchange, similar to levels and differentials these same participants are familiar with on several other exchanges. Volume tiers are not new to the options industry and generally reward Members for submitting additional volume to the Exchange, with Topaz now seeking to introduce a similar structure.

<sup>19</sup> 15 U.S.C. 78f(b)(8).

<sup>20</sup> See NASDAQ Options Rules, Chapter XV Options Pricing, Section 2, NASDAQ Options Market—Fees and Rebates.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>21</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>22</sup> because it establishes a due, fee, or other charge imposed by Topaz.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Topaz-2013-04 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Topaz-2013-04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method.

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>22</sup> 17 CFR 240.19b-4(f)(2).

The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Topaz-2013-04, and should be submitted on or before October 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2013-23007 Filed 9-20-13; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-70428; File No. SR-CTA-2013-05]**

### **Consolidated Tape Association; Notice of Filing of the Eighteenth Substantive Amendment to the Second Restatement of the CTA Plan**

September 17, 2013.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on September 9, 2013, the Consolidated Tape Association ("CTA") Plan participants ("Participants")<sup>3</sup> filed with

<sup>23</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> Each participant executed the proposed amendment. The Participants are: BATS Exchange, Inc., BATS-Y Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc. ("EDGA"), EDGX Exchange, Inc. ("EDGX"), Financial Industry Regulatory Authority, Inc. ("FINRA"), International

the Securities and Exchange Commission ("Commission") a proposal to amend the Second Restatement of the CTA Plan (the "CTA Plan").<sup>4</sup> The amendment proposes to remove odd-lot transactions from the list of transactions that are not to be reported for inclusion on the consolidated tape. The Commission is publishing this notice to solicit comments from interested persons on the proposed amendment.

## I. Rule 608(a)

### A. Purpose of the Amendments

Currently, Section VIII(a) (Responsibility of Exchange Participants) of the CTA Plan provides that each Participant will "collect and report to the Processor all last sale price information to be reported by it relating to transactions in Eligible Securities taking place on its floor." However, Section VI(d) (Transactions not reported (related messages)) provides a list of transactions that "are not to be reported for inclusion on the consolidated tape." That list includes odd-lot transactions.

Because odd-lot transactions account for a not insignificant percentage of trading volume, the Participants have determined that including odd-lot transactions on the consolidated tape of CTA last sale prices would add post-trade transparency to the marketplace.

This amendment proposes to add odd-lot transactions to the consolidated tape by removing them from Section VI(d)'s list of transactions that are not to be reported for inclusion on the consolidated tape.

Due to the lack of economic significance of many individual odd-lot orders, the Participants are not proposing to include bids and offers for odd-lots in the best bid and best offer calculations that the Participants make available under the CQ Plan.

For the same reason, the Participants do not propose to include odd-lot transactions in calculations of last sale prices. Therefore, odd-lot transactions would not be included in calculations of high and low prices and would not be subject to Limit Up/Limit Down rules.

Similarly, including odd-lot transactions on the consolidated tape would not trigger short sale restrictions or trading halts. However, odd-lot transactions would be included in calculations of daily consolidated volume.

For purposes of allocating revenue among the Participants under the CTA Plan, the Participants would include odd-lot transactions in the Security Income Allocation for each Eligible Security under Section XII(a)(ii) (Security Income Allocation) of the CTA plan. Just as with round lot transactions, an odd-lot transaction with a dollar value of \$5000 or more would constitute one qualified transaction report and an odd-lot transaction with a dollar value of less than \$5000 would constitute a fraction of a qualified transaction report that equals the dollar value of the transaction report divided by \$5000. The Participants do not anticipate that this will produce a significant shift in revenue allocation among the Participants. This treatment of odd-lot transactions for revenue allocation purposes does not require a change to the language of the CTA Plan.

### B. Additional Information Required by Rule 608(a)

#### 1. Governing or Constituent Documents

Not applicable.

#### 2. Implementation of the Amendment

All of the Participants have manifested their approval of the proposed amendment by means of their execution of the amendments. Subject to Commission approval of the Amendment, the Participants intend to add odd-lot transactions to the consolidated tape under the CTA Plan commencing October 21, 2013.

#### 3. Development and Implementation Phases

Not applicable.

#### 4. Analysis of Impact on Competition

The proposed amendment does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. This change is being proposed and implemented in parallel with similar changes to the national market system plan governing the trading of stocks listed on NYSE, Amex, and other markets (*i.e.*, the Nasdaq/UTP plan). The Participants do not believe that the proposed plan amendment introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act.<sup>5</sup>

#### 5. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

#### 6. Approval by Sponsors in Accordance With Plan

Under Section IV(b) of the CTA Plan, each Participant must execute a written amendment to the CTA Plan before the amendment can become effective. The amendment is so executed.

#### 7. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

#### 8. Terms and Conditions of Access

Not applicable.

#### 9. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

#### 10. Method of Frequency of Processor Evaluation

Not applicable.

#### 11. Dispute Resolution

Not applicable.

## II. Rule 601(a)

### A. Equity Securities for Which Transaction Reports Shall be Required by the Plan

Not applicable.

### B. Reporting Requirements

As a result of the amendment, each Participant would be required to report odd-lot transactions to the Nasdaq/UTP Plan's Processor for inclusion in the consolidated tape.

### C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

### D. Manner of Consolidation

Odd-lot transactions would not be eligible for inclusion in calculations of last sale prices and would not be included in calculations of high and low prices. However, odd-lot transactions would be included in calculations of daily consolidated volume.

### E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

### F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

Securities Exchange, LLC, NASDAQ OMX BX, Inc. ("Nasdaq BX"), NASDAQ OMX PHLX, Inc. ("Nasdaq PSX"), Nasdaq Stock Market LLC, National Stock Exchange, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC (formerly NYSE Amex, Inc.), and NYSE Arca, Inc. ("NYSE Arca").

<sup>4</sup> See Securities Exchange Act Release No. 10787 (May 10, 1974), 39 FR 17799 (declaring the CTA Plan effective). The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a "transaction reporting plan" under Rule 601 under the Act, 17 CFR 242.601, and a "national market system plan" under Rule 608 under the Act, 17 CFR 242.608.

<sup>5</sup> 15 U.S.C. 78k-1(c)(1)(D).

*G. Terms of Access to Transaction Reports*

Not applicable.

*H. Identification of Marketplace of Execution*

Not applicable.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed amendments are consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CTA-2013-05 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CTA-2013-05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the Amendments that are filed with the Commission, and all written communications relating to the Amendments between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the Amendments also will be available for inspection and copying at the principal office of the CTA.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CTA-2013-05 and should

be submitted on or before October 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2013-23009 Filed 9-20-13; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-70427; File No. SR-BOX-2013-43]**

**Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing of Proposed Rule Change To Permit Complex Orders To Participate in Price Improvement Periods**

September 17, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 5, 2013, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

The Exchange proposes to add a new Rule 7245 to permit Complex Orders to participate in Price Improvement Periods (the "COPIP") and by making certain other conforming and clarifying changes to accommodate the new COPIP Rule. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://boxexchange.com>.

**II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text

of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change**

**1. Purpose**

The Exchange proposes to amend its rules related to trading of Complex Orders<sup>3</sup> on BOX Market LLC ("BOX"), the options trading facility of the Exchange, to permit Complex Orders to be submitted to a price improvement period auction mechanism similar to the existing PIP mechanism for single option series on BOX.<sup>4</sup> The Exchange believes this proposed Complex Order Price Improvement Period ("COPIP")<sup>5</sup> mechanism will result in more efficient transactions, reduced execution risk to BOX Options Participants, and greater opportunities for price improvement through the COPIP. The Exchange believes adoption of the proposal will result in tighter markets, and ensure that each order receives the best possible price.

The Exchange believes the proposed COPIP is an improvement over its current rules regarding Complex Order exposure and execution, and will benefit all market participants submitting Complex Order to BOX. The proposed change will require that Complex Orders on BOX will execute first against interest on the BOX Book where possible, as under the current rule.<sup>6</sup>

**Existing PIP**

The Exchange proposes to add new BOX Rule 7245 to allow Complex Orders to be submitted to the COPIP in substantially the same manner as orders for single options series instruments currently are submitted to the PIP.

Currently, Options Participants executing agency orders for single options series instruments may designate Customer Orders for price

<sup>3</sup> As defined in Rule 7240(a)(5), the term "Complex Order" means any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.

<sup>4</sup> See Rule 7150.

<sup>5</sup> As defined in proposed Rule 7245, the term "COPIP" means Complex Order Price Improvement Period.

<sup>6</sup> See Rule 7240(b)(3)(i) and proposed Rule 7245(f)(3)(i).

<sup>6</sup> 17 CFR 200.30-3(a)(27).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

improvement and submission to the PIP. Customer Orders designated for the PIP ("PIP Orders") may be submitted to BOX with a matching contra order ("Primary Improvement Order") equal to the full size of the PIP Order. The Primary Improvement Order is on the opposite side of the market from the PIP Order and at a price equal to or better than that of the National Best Bid Offer ("NBBO") at the time of the commencement of the PIP (the "PIP Start Price"). BOX begins a PIP by broadcasting a message to market participants via the Exchange's High Speed Vendor Feed ("HSVF"). During the PIP, order flow providers ("OFPs") and Market Makers (other than the Initiating Participant) may submit competing orders ("Improvement Orders") for their own account and OFPs may also provide access to the PIP for the account of a Public Customer or for any account except Market Maker. Options Participants may continually submit competing Improvement Orders during the PIP and Improvement Orders are disseminated to market participants.

At the conclusion of a PIP, the PIP Order is matched against the best prevailing quote(s) or order(s) on BOX (except any pre-PIP Broadcast proprietary quote or order from the Initiating Participant), in accordance with price/time priority as set forth in Rule 7130, whether Improvement Order(s) or Unrelated Order(s) received by BOX, or Legging Orders generated, during the PIP (excluding Unrelated Orders that were immediately executed during the interval of the PIP). Such orders may include agency orders on behalf of Public Customers, market makers at away exchanges and non-BOX Options Participant broker-dealers, as well as non-PIP proprietary orders submitted by Options Participants.

Unrelated Orders<sup>7</sup> and Legging Orders<sup>8</sup> on the same side as the PIP Order received during the PIP may cause the PIP to terminate early under certain circumstances.<sup>9</sup> During a PIP, when an Unrelated Order is submitted to BOX or a Legging Order is generated on the same side as the PIP Order that would cause an execution to occur prior to the end of the PIP, the PIP ends early and the PIP Order is matched as if the PIP terminated on its regular schedule.

Following the execution of the PIP Order, any remaining Improvement Orders are cancelled and the Unrelated Order or Legging Order is filtered normally.<sup>10</sup>

Unrelated Orders and Legging Orders on the opposite side of the PIP Order received during the PIP may be immediately executed under certain circumstances.<sup>11</sup> During a PIP, when such an Unrelated Order is submitted to BOX or a Legging Order is generated on the opposite side of the PIP Order such that it would cause an execution to occur prior to the end of the PIP, the Unrelated Order or Legging Order is immediately executed against the PIP Order. Any remaining portion of the Unrelated Order or Legging Order is filtered normally.<sup>12</sup> Any remaining portion of the PIP Order is executed at the conclusion of the PIP normally.<sup>13</sup> Following the execution of the PIP Order, any remaining Improvement Orders are cancelled.

#### Proposed COPIP on Complex Orders

The Exchange proposes new Rule 7245 that would allow the submission of Complex Orders to a COPIP mechanism that is substantially similar to the PIP except as necessary to account for distinctions between regular orders on the BOX Book and Complex Orders or as otherwise noted below.<sup>14</sup> References to Legging Orders do not appear in the proposed COPIP rules because Legging Orders interact only with the PIP. However, the proposed COPIP rules do include other provisions for interacting with interest on the BOX Book. The manner in which interest on the BOX Book interacts with the COPIP is explained in more detail below.

The Exchange believes this proposal to permit price improvement auctions for Complex Orders will increase opportunities for execution of Complex Orders and interest on the BOX Book. The Exchange believes the proposed COPIP will provide greater flexibility to Participants trading Complex Orders on BOX Market LLC, the Exchange's trading facility ("BOX"). The Exchange further believes the proposed COPIP will provide additional opportunities for Participants to achieve better handling of Complex Orders and result

in increased opportunities for execution and better pricing.

#### General COPIP Provisions

For purposes of the COPIP, the term "Improvement Order" is defined as a competing Complex Order submitted to BOX by an OFP or Market Maker during a COPIP; the term "Unrelated Order" is defined as a non-Improvement Order entered on BOX during a COPIP or BOX Book Interest during a COPIP; and the term "BOX Book Interest" is defined as bids and offers on the BOX Book for the individual legs of a Strategy.<sup>15</sup> These definitions are similar to those used in the PIP rule but, for the COPIP, Unrelated Orders are proposed to include BOX Book Interest capable of executing against COPIP Orders to permit COPIPs to interact with the BOX Book. BOX Book Interests are treated as Unrelated Orders for purposes of the COPIP except where specifically differentiated in proposed Rule 7245 and discussed below.

The Exchange proposes that Options Participants may use the COPIP to execute Complex Orders under certain circumstances subject to the procedures detailed within proposed Rule 7245. In compliance with these procedures, price improvement transactions for Customer Orders that are Complex Orders may be consummated with the Options Participant who submits the Complex Order, with other Options Participants, Improvement Orders or Unrelated Orders.<sup>16</sup>

The Exchange proposes that, when executing Customer Complex Orders by way of the COPIP, Options Participants must ensure that they comply with all the procedures set forth in these Rules for such transactions; that they act with due skill, care and diligence; and that the interests of their Customers are not prejudiced.<sup>17</sup> An OFP may not execute, as principal, an order it represents as agent unless it complies with the provisions of Rule 7140 or the OFP sends the agency order to the COPIP process pursuant to the provisions of proposed Rule 7245.<sup>18</sup> An Options Participant must not use the COPIP process to create a misleading impression of market activity (*i.e.*, the facilities may be used only where there is a genuine intention to execute a bona fide transaction).<sup>19</sup> These provisions are substantially the same as the corresponding rules for the PIP.<sup>20</sup>

<sup>7</sup> As defined in Rule 7150(a), the term "Unrelated Order" with respect to a PIP means a non-Improvement Order entered into the BOX market during a PIP.

<sup>8</sup> As defined in Rule 7240(c)(1), the term "Legging Order" means a Limit Order on the BOX Book that represents one side of a Complex Order that is to buy or sell an equal quantity of two options series resting on the Complex Order Book.

<sup>9</sup> See Rule 7150(i).

<sup>10</sup> See Rule 7130(b).

<sup>11</sup> See Rule 7150(j).

<sup>12</sup> See Rule 7130(b).

<sup>13</sup> See Rule 7150(f)(3).

<sup>14</sup> The Exchange notes that the provisions in proposed Rule 7245 are substantially similar to those in Rule 7150, amended to reflect their applicability to a COPIP on a Complex Order Strategy as compared to a PIP on orders for single options series instruments.

<sup>15</sup> See proposed Rule 7245(a).

<sup>16</sup> See proposed Rule 7245(b).

<sup>17</sup> See proposed Rule 7245(c).

<sup>18</sup> See proposed Rule 7245(d).

<sup>19</sup> See proposed Rule 7245(e).

<sup>20</sup> See Rule 7150(c), (d) and (e).

## COIP Mechanism

Consistent with the PIP, the Exchange proposes that Options Participants, both OFPs and Market Makers, (“Initiating Participants”) executing agency orders may designate Complex Orders that are marketable Limit Orders, BOX-Top Orders or Market Orders for price improvement and submission to the COIP. Complex Orders designated for the COIP (“COIP Orders”) will be submitted to BOX with a matching contra order (“Primary Improvement Order”) equal to the full size of the COIP Order. The Primary Improvement Order will be on the opposite side of the market than that of the COIP Order and represents either: (1) A single price (“Single-Priced Primary Improvement Order”) that is equal to or better than cNBBO,<sup>21</sup> cBBO<sup>22</sup> and BBO on the Complex Order Book for the Strategy at the time of the commencement of the COIP; or (2) an auto-match submission that will automatically match both the price and size of all competing orders, including Improvement Orders and Unrelated Orders at any price level achieved during the COIP or only up to a limit price (“Max Improvement Primary Improvement Order”). Either the Single-Priced Primary Improvement Order or the Max Improvement Primary Improvement Order will designate the COIP auction start price (“COIP Start Price”), which will be equal to or better than cNBBO, cBBO and BBO on the Complex Order Book for the Strategy at the time of commencement of the COIP. BOX will commence a COIP by broadcasting a message via the HSVF (the “COIP Broadcast”) that states that a Primary Improvement Order has been processed; contains information concerning Strategy identifier, size, COIP Start Price, and side of market; and states when the COIP will conclude.<sup>23</sup> Unlike the PIP rule, the proposed Rule 7245 does not refer to quotes because quotes do not exist on Complex Orders. All market participants are able to receive broadcast notification of COIPs and Improvement Orders via the HSVF. As a result, no Participants will have an information advantage.

As in the PIP, the standard COIP duration is proposed to be one hundred

milliseconds,<sup>24</sup> commencing upon the dissemination of the COIP Broadcast. At the conclusion of the COIP, the COIP Order will be executed as described below. During a COIP, OFPs and Market Makers (except for the Initiating Participant) may submit Improvement Orders for their own account. OFPs may submit Improvement Orders for the account of a Public Customer under any type of instruction they wish to accept. An Improvement Order submitted to the COIP for the account of a Public Customer must be identified as a Public Customer Order. Options Participants who submit Improvement Orders for a COIP will be deemed “COIP Participants” for that specific COIP only, and may continually submit competing Improvement Orders during that COIP. During the COIP, Improvement Orders will be broadcast via the HSVF but will not be disseminated through OPRA.<sup>25</sup> The proposed COIP rule text makes clear that the COIP broadcast is disseminated via the HSVF. Complex Order information is not broadcast to OPRA.

Consistent with the PIP, an Initiating Participant in a COIP is not permitted to cancel or to modify the size of its Single-Priced Primary Improvement Order or the COIP Order at any time during a COIP, and may modify only the price of its Single-Priced Primary Improvement Order by improving it. The subsequent price modifications to a Single-Priced Primary Improvement Order are treated as new Improvement Orders for the sake of establishing priority in the COIP process. The Initiating Participant is not permitted to cancel or modify the Max Improvement Primary Improvement Order, including the COIP Start Price, the designated limit price or the size. Just as in a PIP, Options Participants that submit Improvement Orders in a COIP may: (i) Submit competing Improvement

Order(s) for any size up to the size of the COIP Order; (ii) submit competing Improvement Order(s) for any price equal to or better than the COIP Start Price; (iii) improve the price of their Improvement Order(s) at any point during the COIP; and (iv) decrease the size of their Improvement Order(s) only by improving the price of that Complex Order. Improvement Orders may be submitted in one-cent increments.<sup>26</sup>

At the conclusion of a COIP, just as with a PIP,<sup>27</sup> the COIP Order is proposed to execute against the best prevailing order(s) on BOX (except any pre-COIP Broadcast proprietary order from the Initiating Participant), in accordance with price/time priority, whether Improvement Order(s) or Unrelated Order(s) received by BOX during the COIP (excluding all Unrelated Orders that were immediately executed during the interval of the COIP). Such Unrelated Orders may include agency orders on behalf of Public Customers, market makers at away exchanges and non-BOX Options Participant broker-dealers, as well as non-COIP proprietary orders submitted by Options Participants. Any portion of an Improvement Order left unfilled will be cancelled.<sup>28</sup>

Notwithstanding the foregoing execution rules for a COIP, BOX Book Interest is proposed to execute in priority over Complex Orders at the same price<sup>29</sup> so as to preserve the already established execution priority of interest on the BOX Book over Complex Orders.<sup>30</sup>

#### Example 1: Execution of COIP Order With BOX Book Interest Priority

For example, suppose the Complex Order Book for Strategy A+B is initially as follows:

##### Orders for Strategy A+B:

BOX Book Interest to buy 10 at \$2.00  
BOX Book Interest to sell 10 at \$2.10  
Complex Order to buy 20 at \$2.00  
cNBBO is \$2.00 bid, \$2.10 offered.

A BOX Participant then initiates a COIP Order to sell 30 A+B. The COIP Order is opposite the Participant's Primary Improvement Order to buy 30 at \$2.01. The orders for Strategy A+B then are as follows:

##### Orders for Strategy A+B:

Primary Improvement Order to buy 30 at \$2.01

<sup>26</sup> See proposed Rule 7245(f)(2).

<sup>27</sup> See Rule 7150(f)(3).

<sup>28</sup> See proposed Rule 7245(f)(3).

<sup>29</sup> See proposed Rule 7245(f)(3)(i).

<sup>30</sup> The execution priority of interest on the BOX Book over Complex Orders is consistent with existing Rules 7240(b)(3)(i).

<sup>21</sup> As defined in Rule 7240(a)(3), the term “cNBBO” means the best net bid and offer price for a Complex Order Strategy based on the NBBO for the individual options components of such Strategy.

<sup>22</sup> As defined in Rule 7240(a)(1), the term “cBBO” means the best net bid and offer price for a Complex Order Strategy based on the BBO on the BOX Book for the individual options components of such Strategy.

<sup>23</sup> See proposed Rule 7245(f).

<sup>24</sup> The Exchange believes that 100 milliseconds is an adequate duration for the COIP. The COIP duration would be the same as the current duration of the PIP and, therefore, the Exchange believes the COIP duration would not create any additional burden for Participants participating in a COIP. The Exchange believes customers are capable of responding within the proposed duration and has not received any complaints regarding the duration of the PIP since the timer was reduced from one second to 100 milliseconds on February 13, 2012. The Exchange has had discussions with several BOX Participants, each of which has indicated that 100 milliseconds is more than adequate to process COIP Orders. Similarly, CBOE recently reduced certain of its response times to as little as 20 milliseconds (See, e.g., CBOE Regulatory Circular RG13-094, dated June 27, 2013 and effective August 1, 2013).

<sup>25</sup> See proposed Rule 7245(f)(1).

COIP Order to sell 30  
 BOX Book Interest to buy 10 at \$2.00  
 BOX Book Interest to sell 10 at \$2.10  
 Complex Order to buy 20 at \$2.00

Subsequently, the BOX Book for each of A and B changes to generate BOX Book Interest to buy 20 A+B at \$2.01. The orders for Strategy A+B at the end of the COIP then are as follows:

#### Orders for Strategy A+B:

Primary Improvement Order to buy 30 at \$2.01  
 COIP Order to sell 30  
 BOX Book Interest to buy 20 at \$2.01

The allocation of Strategies for execution with the COIP Order to sell 30 A+B at the end of the COIP is as follows:

#### Allocation for Execution of COIP Order to Sell 30 A+B:

BOX Book Interest to buy 20 at \$2.01  
 Primary Improvement Order to buy 10 at \$2.01

**Note:** The BOX Book Interest to buy 20 A+B at \$2.01 is fully executed in first priority. The Primary Improvement Order is allocated the remaining 10 Strategies.

\* \* \* \* \*

Further, no Complex Order for a non-market maker broker-dealer account of an Options Participant will be executed before all Public Customer Complex Order(s), whether Improvement Order(s) or non-Improvement Order(s), and all non-BOX Options Participant broker-dealer Complex Order(s) at the same price have been filled; provided however, that all Complex Orders on the Complex Order Book prior to the COIP Broadcast, excluding any proprietary order(s) from the Initiating Participant, will be filled in time priority before any other Complex Order at the same price.<sup>31</sup> These proposed rule features adapt the existing PIP mechanism for COIP auctions while preserving the established execution priority rules for Complex Orders.

#### COIP Trade Allocation Priority

Subject to the execution priority of BOX Book Interests described above, the Initiating Participant is proposed to retain certain priority and trade allocation privileges upon conclusion of a COIP.<sup>32</sup> The priority and trade allocation privileges retained by Initiating Participants in a proposed COIP are substantially similar to those currently afforded Initiating Participants in a PIP<sup>33</sup> except as noted below. These

privileges are described in more detail below.

In instances in which a Single-Priced Primary Improvement Order, as modified (if at all), is matched by or matches any Complex Order(s) or BOX Book Interest at any price level, the Initiating Participant would retain priority for up to forty percent (40%) of the original size of the COIP Order, notwithstanding the time priority of the Primary Improvement Order or Complex Order(s). However, if only one Complex Order or BOX Book Interest matches or is better than the Initiating Participant's Single-Priced Primary Improvement Order, then the Initiating Participant may retain priority for up to fifty percent (50%) of the original size of the COIP Order. The Initiating Participant will receive additional allocation only after all other Complex Orders have been filled at that price level.<sup>34</sup> For purposes of calculating the Initiating Participant's priority allocation, BOX Book Interests are proposed to be included as competing orders in a COIP.

#### Example 2: Primary Improvement Order Priority

##### Example 2(a)

For example, suppose the orders for Strategy A+B at the end of a COIP are as follows:

#### Orders for Strategy A+B:

Improvement Order to buy 20 at \$2.04  
 COIP Order to sell 30  
 Primary Improvement Order to buy 30 at \$2.04  
 cNBBO is \$2.00 bid, \$2.10 offered

In this case, there is only one competing Improvement Order and, therefore, the Primary Improvement Order receives an allocation of 50% of the original size of the COIP Order.

The allocation of Strategies for execution with the COIP Order to sell 30 A+B at the end of the COIP is as follows:

#### Allocation for Execution of COIP Order to Sell 30 A+B:

Primary Improvement Order to buy 15 at \$2.04  
 Improvement Order to buy 15 at \$2.04

##### Example 2(b)

Alternatively, suppose the orders for Strategy A+B at the end of a COIP are as follows:

#### Orders for Strategy A+B:

Primary Improvement Order to buy 30 at \$2.04  
 COIP Order to sell 30

BOX Book Interest to buy 20 at \$2.04  
 cNBBO is \$2.00 bid, \$2.10 offered

The BOX Book Interest has execution priority over Complex Orders, including the Primary Improvement Order, at the same price.

The allocation of Strategies for execution with the COIP Order to sell 30 A+B at the end of the COIP is as follows:

#### Allocation for Execution of COIP Order to Sell 30 A+B:

BOX Book Interest to buy 20 at \$2.04  
 Primary Improvement Order to buy 10 at \$2.04

**Note:** The BOX Book Interest to buy 20 A+B at \$2.04 is fully executed in first priority. The Primary Improvement Order is allocated the remaining 10 Strategies.

##### Example 2(c)

Alternatively, suppose the orders for Strategy A+B at the end of a COIP are as follows:

#### Orders for Strategy A+B:

Improvement Order to buy 20 at \$2.04  
 COIP Order to sell 30  
 Primary Improvement Order to buy 30 at \$2.04  
 BOX Book Interest to buy 10 at \$2.04  
 cNBBO is \$2.00 bid, \$2.10 offered

Because the BOX Book Interest is considered to be a separate order for the determination of the 40/50% Initiating Participant priority for the Primary Improvement Order, the Primary Improvement Order retains execution priority for only 40% of the COIP Order.

The allocation of Strategies for execution with the COIP Order to sell 30 A+B at the end of the COIP is as follows:

#### Allocation for Execution of COIP Order to Sell 30 A+B:

BOX Book Interest to buy 10 at \$2.04  
 Primary Improvement Order to buy 12 at \$2.04  
 Improvement Order to buy 8 at \$2.04

**Note:** The BOX Book Interest to buy 10 A+B at \$2.04 is fully executed in first priority. The Primary Improvement Order is allocated 12 Strategies (40% of the COIP Order) and the remaining 8 Strategies are allocated to the Improvement Order.

##### Example 2(d)

Alternatively, suppose the orders for Strategy A+B at the end of a COIP are as follows:

#### Orders for Strategy A+B:

Improvement Order to buy 20 at \$2.04

<sup>31</sup> See proposed Rule 7245(f)(3)(ii).

<sup>32</sup> See proposed Rule 7245(f)(3)(iii) and 7245(g).

<sup>33</sup> See Rule 7150(g).

<sup>34</sup> See proposed Rule 7245(g)(1).

COIP Order to sell 30

Primary Improvement Order to buy 30 at \$2.04

BOX Book Interest to buy 20 at \$2.04  
cNBBO is \$2.00 bid, \$2.10 offered

Because the BOX Book Interest is considered to be a separate order for the determination of the 40/50% Initiating Participant priority for the Primary Improvement Order, the Primary Improvement Order retains execution priority for only 40% of the COIP Order.

The allocation of Strategies for execution with the COIP Order to sell 30 A+B at the end of the COIP is as follows:

#### **Allocation for Execution of COIP Order to Sell 30 A+B:**

BOX Book Interest to buy 20 at \$2.04  
Primary Improvement Order to buy 10 at \$2.04

**Note:** The BOX Book Interest to buy 20 A+B at \$2.04 is fully executed in first priority. The Primary Improvement Order would be entitled to be allocated 12 Strategies (40% of the COIP Order). However, instead, the Primary Improvement Order is allocated the remaining 10 Strategies and the Improvement Order does not receive any allocation.

\* \* \* \* \*

In instances in which a Max Improvement Primary Improvement Order is submitted by the Initiating Participant, the Initiating Participant would be allocated its full size at each price level, except where restricted by the designated limit price and subject to the limitations discussed in the next following paragraph below, until a price level is reached where the balance of the COIP Order can be fully executed. Only at such price level would the Initiating Participant retain priority for up to forty percent (40%) of the remaining size of the COIP Order. However, if only one competing Complex Order or BOX Book Interest matches the Initiating Participant at the final price level, then the Initiating Participant may retain priority for up to fifty percent (50%) of the remaining size of the COIP Order.<sup>35</sup> As with Single-Priced Primary Improvement Orders discussed above, for purposes of calculating the Initiating Participant's priority allocation, BOX Book Interests are proposed to be included as competing orders in a COIP.

#### **Example 3: Execution of COIP Order at Multiple Price Levels With Max Improvement Primary Improvement Order**

For example, suppose the Complex Order Book for Strategy A+B is initially as follows:

##### **Orders for Strategy A+B:**

BOX Book Interest to buy 10 at \$2.00  
BOX Book Interest to sell 10 at \$2.10  
Complex Order to buy 20 at \$2.00  
cNBBO is \$2.00 bid, \$2.10 offered

A BOX Participant then initiates a COIP Order to sell 100 A+B. The COIP Order is opposite the Participant's Primary Improvement Order to buy 100 at \$2.01. The Participant's Max Improvement Price is 2.03. The orders for Strategy A+B then are as follows:

##### **Orders for Strategy A+B:**

Primary Improvement Order to buy 100 at \$2.01  
COIP Order to sell 100  
BOX Book Interest to buy 10 at \$2.00  
BOX Book Interest to sell 10 at \$2.10  
Complex Order to buy 20 at \$2.00

Subsequently, two competing Improvement Orders are received: one Improvement Order to buy 30 A+B at \$2.04 and one Improvement Order to buy 50 A+B at \$2.03. The Primary Improvement Order improves to \$2.03. Also, the BOX Book Interest changes to 40 A+B at \$2.03. The orders for Strategy A+B at the end of the COIP then are as follows:

##### **Orders for Strategy A+B:**

Improvement Order to buy 30 at \$2.04  
COIP Order to sell 100  
Primary Improvement Order to buy 100 at \$2.03  
BOX Book Interest to buy 40 at \$2.03  
Improvement Order to buy 50 at \$2.03

The allocation of Strategies for execution with the COIP Order to sell 100 A+B at the end of the COIP is as follows:

#### **Allocation for Execution of COIP Order to Sell 100 A+B:**

Improvement Order to buy 30 at \$2.04  
BOX Book Interest to buy 40 at \$2.03  
Primary Improvement Order to buy 30 at \$2.03

**Note:** While the Primary Improvement Order had a right to buy 40 Strategies at \$2.03 (40% of original COIP quantity of 100), the Initiating Participant is allocated only 30 Strategies because the BOX Book Interest has priority for its full amount at that price level.

\* \* \* \* \*

As in a PIP, the Primary Improvement Order is proposed to follow, in time

priority, all Complex Orders on the Complex Order Book prior to the COIP Broadcast that are equal to the Single Priced Primary Improvement Order price; or the execution price of a Max Improvement Primary Improvement Order that results in the balance of the COIP Order being fully executed, except any proprietary order(s) from the Initiating Participant. Such proprietary order(s) would not be executed against the COIP Order during or at the conclusion of the COIP.<sup>36</sup> As mentioned above, quotes are included in the PIP rules<sup>37</sup> but are not part of the proposed COIP rules because quotes are not provided on Complex Orders.

The Primary Improvement Order is proposed to yield priority to certain competing Complex Orders, including the priority of the Initiating Participant described above, in substantially the same circumstances as the PIP<sup>38</sup> as follows.

When a Single-Priced or Max Improvement Primary Improvement Order for the proprietary account of an OFP is matched by or matches any competing Public Customer Complex Order(s), whether Improvement Order(s), Unrelated Order(s) or any non-BOX Options Participant broker-dealer Complex Order(s) at any price level, it will yield priority to them.<sup>39</sup>

#### **Example 4: Initiating Participant Yields to Public Customer Order**

For example, suppose the Complex Order Book for Strategy A+B is initially as follows:

##### **Orders for Strategy A+B:**

BOX Book Interest to buy 10 at \$2.00  
BOX Book Interest to sell 10 at \$2.10  
Complex Order to buy 20 at \$2.00  
cNBBO is \$2.00 bid, \$2.10 offered

A BOX Participant that is a broker-dealer then initiates a COIP Order to sell 30 A+B. The COIP Order is opposite the Participant broker-dealer's Primary Improvement Order, for its own account, to buy 30 at \$2.01. The orders for Strategy A+B then are as follows:

##### **Orders for Strategy A+B:**

Primary Improvement Order to buy 30 at \$2.01  
COIP Order to sell 30  
BOX Book Interest to buy 10 at \$2.00  
BOX Book Interest to sell 10 at \$2.10  
Complex Order to buy 20 at \$2.00

Subsequently, a competing Improvement Order on behalf of a Public Customer is received to buy 20

<sup>36</sup> See proposed Rule 7245(g)(3).

<sup>37</sup> See Rule 7150(g)(3).

<sup>38</sup> See Rule 7150(g)(4).

<sup>39</sup> See proposed Rule 7245(g)(4)(i).

<sup>35</sup> See proposed Rule 7245(g)(2).

A+B at \$2.02. The Primary Improvement Order matches this price. The orders for Strategy A+B at the end of the COPIP then are as follows:

**Orders for Strategy A+B:**

Primary Improvement Order to buy 30 at \$2.02  
COPIP Order to sell 30  
Public Customer Improvement Order to buy 20 at \$2.02  
BOX Book Interest to buy 10 at \$2.00  
BOX Book Interest to sell 10 at \$2.10  
Complex Order to buy 20 at \$2.00

Ordinarily, the trade allocation at the end of the COPIP (all at \$2.02) would be 15 Strategies (50%) to the Primary Improvement Order and the remaining 15 Strategies to the Improvement Order. However, in this example, the Primary Improvement Order must yield allocation to the Improvement Order because the Primary Improvement Order is for the account of a broker-dealer and the competing Improvement Order is for the account of a Public Customer.

The allocation of Strategies for execution with the COPIP Order to sell 30 A+B at the end of the COPIP is as follows:

**Allocation for Execution of COPIP Order to Sell 30 A+B:**

Public Customer Improvement Order to buy 20 at \$2.02  
Primary Improvement Order to buy 10 at \$2.02

**Note:** If the Public Customer Improvement Order had been for 30 Strategies, the Public Customer Improvement Order would have received the entire trade allocation.

\* \* \* \* \*

When an unmodified Single-Priced Primary Improvement Order for the account of a Market Maker is matched by any competing Public Customer Complex Order(s), whether Improvement Order(s), Unrelated Order(s) or any non-BOX Options Participant broker-dealer Complex Order(s) at the initial COPIP price level, it will yield priority to them.<sup>40</sup>

**Example 5: Initiating Market Maker Yields to Public Customer Order at Single Price Level**

For example, suppose the Complex Order Book for Strategy A+B is initially as follows:

**Orders for Strategy A+B:**

BOX Book Interest to buy 10 at \$2.00  
BOX Book Interest to sell 10 at \$2.10  
Complex Order to buy 20 at \$2.00  
cNBBO is \$2.00 bid, \$2.10 offered

A BOX Participant that is a Market Maker then initiates a COPIP Order to sell 30 A+B. The COPIP Order is opposite the Participant Market Maker's Primary Improvement Order, for its own account, to buy 30 at \$2.01. The orders for Strategy A+B then are as follows:

**Orders for Strategy A+B:**

Primary Improvement Order to buy 30 at \$2.01  
COPIP Order to sell 30  
BOX Book Interest to buy 10 at \$2.00  
BOX Book Interest to sell 10 at \$2.10  
Complex Order to buy 20 at \$2.00

Subsequently, a competing Improvement Order on behalf of a Public Customer is received to buy 20 A+B at \$2.01. The orders for Strategy A+B at the end of the COPIP then are as follows:

**Orders for Strategy A+B (with buy orders displayed in time priority):**

Primary Improvement Order to buy 30 at \$2.01  
COPIP Order to sell 30  
Public Customer Improvement Order to buy 20 at \$2.01  
BOX Book Interest to buy 10 at \$2.00  
BOX Book Interest to sell 10 at \$2.10

Ordinarily, the trade allocation at the end of the COPIP (all at \$2.01) would be 15 Strategies (50%) to the Primary Improvement Order and the remaining 15 Strategies to the Improvement Order. However, as the execution price of the COPIP Order is at the unmodified original COPIP start price of \$2.01, the Primary Improvement Order must yield allocation to the Improvement Order because the Primary Improvement Order was initiated by a Market Maker and the competing Improvement Order is for the account of a Public Customer.

The allocation of Strategies for execution with the COPIP Order to sell 30 A+B at the end of the COPIP is as follows:

**Allocation for Execution of COPIP Order to Sell 30 A+B:**

Public Customer Improvement Order to buy 20 at \$2.01  
Primary Improvement Order to buy 10 at \$2.01

**Note:** If the Public Customer Improvement Order had been for 30 Strategies, the Public Customer Improvement Order would have received the entire trade allocation.

\* \* \* \* \*

When a Max Improvement or a modified Single-Priced Primary Improvement Order for the account of a Market Maker matches any competing Public Customer Complex Order(s), whether Improvement Order(s),

Unrelated Order(s) or any non-BOX Options Participant broker-dealer Complex Order(s) at subsequent price levels, it will yield priority to them.<sup>41</sup>

**Example 6: Initiating Market Maker Yields to Public Customer at Any Price Level**

For example, suppose the Complex Order Book for Strategy A+B is initially as follows:

**Orders for Strategy A+B:**

BOX Book Interest to buy 10 at \$2.00  
BOX Book Interest to sell 10 at \$2.10  
Complex Order to buy 20 at \$2.00  
cNBBO is \$2.00 bid, \$2.10 offered

A BOX Participant that is a Market Maker then initiates a COPIP Order to sell 30 A+B. The COPIP Order is opposite the Participant Market Maker's Primary Improvement Order, for its own account, to buy 30 at \$2.01. The orders for Strategy A+B then are as follows:

**Orders for Strategy A+B:**

Primary Improvement Order to buy 30 at \$2.01  
COPIP Order to sell 30  
BOX Book Interest to buy 10 at \$2.00  
BOX Book Interest to sell 10 at \$2.10  
Complex Order to buy 20 at \$2.00

Subsequently, a competing Improvement Order on behalf of a Public Customer is received to buy 20 A+B at \$2.02. The Primary Improvement Order matches this price. The orders for Strategy A+B at the end of the COPIP then are as follows:

**Orders for Strategy A+B (with buy orders displayed in time priority):**

Public Customer Improvement Order to buy 20 at \$2.02  
Primary Improvement Order to buy 30 at \$2.02  
COPIP Order to sell 30  
BOX Book Interest to buy 10 at \$2.00

Ordinarily, the trade allocation at the end of the COPIP (all at \$2.02) would be 15 Strategies (50%) to the Primary Improvement Order and the remaining 15 Strategies to the Improvement Order. However, as the Improvement Order for the account of a Public Customer has time priority over the Primary Improvement Order submitted by a Market Maker at this price, the Primary Improvement Order must yield allocation to the Improvement Order.

The allocation of Strategies for execution with the COPIP Order to sell 30 A+B at the end of the COPIP is as follows:

<sup>40</sup> See proposed Rule 7245(g)(4)(ii).

<sup>41</sup> See proposed Rule 7245(g)(4)(iii).

### Allocation for Execution of COPIP Order to Sell 30 A+B:

Public Customer Improvement Order to buy 20 at \$2.02

Primary Improvement Order to buy 10 at \$2.02

**Note:** If the Public Customer Improvement Order had been for 30 Strategies, the Public Customer Improvement Order would have received the entire trade allocation.

\* \* \* \* \*

Consistent with the PIP, when the Primary Improvement Order receives a trade allocation as discussed above, it is proposed to be entitled to a trade allocation of at least one (1) Strategy.<sup>42</sup> This assures meaningful execution priority for Primary Improvement Orders.

At its option, the Initiating Participant may designate a lower (but not higher) minimum priority and trade allocation privilege percentage upon the conclusion of the COPIP auction than it is otherwise entitled to. When starting a COPIP, the Initiating Participant may submit to BOX the Primary Improvement Order with a designation of the total amount of the COPIP Order it is willing to “surrender” to the other COPIP Participants (“COPIP Surrender Quantity”). Under no circumstances will the Initiating Participant receive an allocation percentage preference of more than 50% with one competing order, including counting BOX Book Interest as a competing order, or 40% with multiple competing orders, including counting BOX Book Interest as a competing order.<sup>43</sup>

Upon the conclusion of the COPIP auction, when the Exchange’s Trading Host determines the priority and trade allocation amounts for the Initiating Participant as described above, the Trading Host will automatically adjust the trade allocations to the other COPIP Participants up to the COPIP Surrender Quantity. The Primary Improvement Order will be allocated the remaining size of the COPIP Order above the COPIP Surrender Quantity, if any, as described above. If the aggregate size of other COPIP Participants’ contra Complex Orders is not equal to or greater than the COPIP Surrender Quantity, then the remaining COPIP Surrender Quantity will be left unfilled and the Primary Improvement Order will be allocated the remaining size of the COPIP Order described above.<sup>44</sup>

### Example 7: COPIP Surrender Quantity

For example, suppose the Complex Order Book for Strategy A+B is initially as follows:

#### Orders for Strategy A+B:

BOX Book Interest to buy 10 at \$2.00  
BOX Book Interest to sell 10 at \$2.10  
Complex Order to buy 20 at \$2.00  
cNBBO is \$2.00 bid, \$2.10 offered.

A BOX Participant then initiates a COPIP Order to sell 30 A+B. The COPIP Order is opposite the Participant’s Primary Improvement Order. The Participant indicates a surrender quantity of 30 Strategies. The orders for Strategy A+B then are as follows:

#### Orders for Strategy A+B:

Primary Improvement Order to buy 30 at \$2.01  
COPIP Order to sell 30  
BOX Book Interest to buy 10 at \$2.00  
BOX Book Interest to sell 10 at \$2.10  
Complex Order to buy 20 at \$2.00

Subsequently, a competing Improvement Order is received to buy 20 A+B at \$2.04. The Primary Improvement Order matches this price. Also, the BOX Book Interest changes to 10 A+B at \$2.04. The orders for Strategy A+B at the end of the COPIP then are as follows:

#### Orders for Strategy A+B:

Improvement Order to buy 20 at \$2.04  
COPIP Order to sell 30  
Primary Improvement Order to buy 30 at \$2.04  
BOX Book Interest to buy 10 at \$2.04

The allocation of Strategies for execution with the COPIP Order to sell 30 A+B at the end of the COPIP is as follows:

### Allocation for Execution of COPIP Order to Sell 30 A+B:

BOX Book Interest to buy 10 at \$2.04  
Improvement Order to buy 20 at \$2.04

**Note:** While the Primary Improvement Order had a right to 12 Strategies at \$2.04 (40% of original COPIP quantity of 30), the Initiating Participant indicated a surrender quantity of 30, which means the Initiating Participant was willing to yield the entire quantity to competing Improvement Orders. As a result, the competing Improvement Order at \$2.04 is filled in its entirety and the Primary Improvement Order receives no trade allocation.

However, if the Primary Improvement Order had indicated a surrender quantity of 22 Strategies, allocation of Strategies for execution with the COPIP Order to sell 30 A+B at the end of the COPIP would be as follows:

### Allocation for Execution of COPIP Order to Sell 30 A+B:

BOX Book Interest to buy 10 at \$2.04  
Primary Improvement Order to buy 8 at \$2.04  
Improvement Order to buy 12 at \$2.04

\* \* \* \* \*

Unlike a PIP, the COPIP is not proposed to include Customer COPIP Orders (“CPOs”). In a PIP, certain orders on the BOX Book on single option series trade in minimum increments greater than one cent while a PIP Order on the same series can operate in one cent increments. A CPO allows a Public Customer to submit an order on a single option series, through an OFP, specifying one price for entry on the BOX Book (in the applicable minimum increment for that series) and a different price for interaction with a PIP (in one cent increments).<sup>45</sup> Since all Complex Orders already trade in one cent increments, as would the COPIP, no benefit would be gained by proposing CPOs for the COPIP. Public Customers may submit Complex Orders to the Exchange and Improvement Orders to interact with a COPIP.

### Immediate Execution Prior to the End of a COPIP

Executions prior to the regular ending time of a COPIP are handled substantially the same as in a PIP,<sup>46</sup> with necessary changes to account for differences between Complex Orders and orders on single series options instruments. Legging Orders do not apply in a COPIP and BOX Book Interests are included as Unrelated Orders in a COPIP.

In cases where an Unrelated Order is submitted to BOX on the same side as the COPIP Order such that it would cause an execution to occur prior to the end of the COPIP, the COPIP will be deemed concluded and the COPIP Order will be matched as described above.<sup>47</sup> BOX Book Interest will be fully executed at each price level prior to any other executions. Specifically, the submission to BOX of a BOX-Top Complex Order or Market Complex Order on the same side as a COPIP Order will prematurely terminate the COPIP when, at the time of the submission of such orders, the best Complex Order or BOX Book Interest is equal to or better than the cNBBO on the opposite side of the COPIP Order. The submission to BOX of executable BOX Book Interest or an executable Limit Complex Order on the same side as a

<sup>42</sup> See proposed Rule 7245(g)(5).

<sup>43</sup> See proposed Rule 7245(g)(6)(i).

<sup>44</sup> See proposed Rule 7245(g)(6)(ii).

<sup>45</sup> See Rule 7150(h).

<sup>46</sup> See Rule 7150(i) and (j).

<sup>47</sup> Execution rules are set forth in proposed Rule 7245(f)(3).

COPIP Order will prematurely terminate the COPIP if, (i) at the time of submission of the Limit Complex Order, the Limit Complex Order price is equal to or better than cNBBO, and BBO on the Complex Order Book or cBBO is equal to or better than the cNBBO, on the opposite side of the market or (ii) at the time of submission of the BOX Book Interest, the BOX Book Interest is executable against the Complex Order Book. Following the conclusion of the COPIP, any remaining Improvement Orders are cancelled, any remaining non-Improvement Orders are filtered pursuant to Rule 7240(b)(3)(iii) and any remaining BOX Book Interest is filtered pursuant to Rule 7130(b).<sup>48</sup>

**Example 8: Early Termination of COPIP Due to Unrelated Order on Same Side as COPIP Order**

**Example 8(a)**

For example, suppose the Complex Order Book for Strategy A+B is initially as follows:

**Orders for Strategy A+B:**

BOX Book Interest to buy 10 at \$2.00  
BOX Book Interest to sell 10 at \$2.10  
Complex Order to buy 20 at \$2.00  
cNBBO is \$2.00 bid, \$2.10 offered.

A BOX Participant then initiates a COPIP Order to sell 100 A+B. The COPIP Order is opposite the Participant's Primary Improvement Order. The orders for Strategy A+B then are as follows:

**Orders for Strategy A+B:**

Primary Improvement Order to buy 100 at \$2.01  
COPIP Order to sell 100  
BOX Book Interest to buy 10 at \$2.00  
BOX Book Interest to sell 10 at \$2.10  
Complex Order to buy 20 at \$2.00

During the COPIP, two competing Improvement Orders are received: One Improvement Order to buy 30 A+B at \$2.05 and one Improvement Order to buy 50 A+B at \$2.03. The Primary Improvement Order has improved to \$2.03. Also, the BOX Book Interest changes to 40 A+B at \$2.03. The orders for Strategy A+B then are as follows:

**Orders for Strategy A+B:**

Improvement Order to buy 30 at \$2.05  
COPIP Order to sell 100  
Primary Improvement Order to buy 100 at \$2.03  
BOX Book Interest to buy 40 at \$2.03  
BOX Book Interest to sell 10 at \$2.10  
Improvement Order to buy 50 at \$2.03  
Complex Order to buy 20 at \$2.00

Subsequently, during the COPIP, the BOX Book Interest changes to sell 5 A+B

at \$2.05. Because the BOX Book Interest could execute against the Improvement Order to buy 30 A+B at \$2.05, the COPIP instead terminates early and executes.

The allocation of Strategies for execution with the COPIP Order to sell 100 A+B upon the early termination of the COPIP is as follows:

**Allocation for Execution of COPIP Order to Sell 100 A+B:**

Improvement Order to buy 30 at \$2.05  
BOX Book Interest to buy 40 at \$2.03  
Primary Improvement Order to buy 30 at \$2.03

The BOX Book Interest to sell 5 A+B at \$2.05 caused the COPIP to terminate early<sup>49</sup> and cannot execute because it is on the same side as the COPIP Order and, after early termination and execution of the COPIP, no executable buy-side interest at that price exists. As a result, the BOX Book Interest is entered on the Complex Order Book as an Implied Order. The Complex Order Book for Strategy A+B then is as follows:

**Complex Order Book for Strategy A+B:**

BOX Book Interest to buy 10 at \$2.00  
Implied Order to sell 5 at \$2.05  
Complex Order to buy 20 at \$2.00  
cNBBO is \$2.00 bid, \$2.05 offered.

**Example 8(b):**

Alternatively, suppose the Complex Order Book for Strategy A+B is initially as follows:

**Orders for Strategy A+B:**

BOX Book Interest to buy 10 at \$2.00  
BOX Book Interest to sell 10 at \$2.10  
Complex Order to buy 20 at \$2.00  
cNBBO is \$2.00 bid, \$2.10 offered

A BOX Participant then initiates a COPIP Order to sell 100 A+B. The COPIP Order is opposite the Participant's Primary Improvement Order. The orders for Strategy A+B then are as follows:

**Orders for Strategy A+B:**

Primary Improvement Order to buy 100 at \$2.01  
COPIP Order to sell 100  
BOX Book Interest to buy 10 at \$2.00  
BOX Book Interest to sell 10 at \$2.10  
Complex Order to buy 20 at \$2.00

During the COPIP, the BOX Book Interest changes to buy 20 A+B at \$2.02.

The Primary Improvement Order has improved to \$2.02. The orders for Strategy A+B then are as follows:

**Orders for Strategy A+B:**

Primary Improvement Order to buy 100 at \$2.02  
COPIP Order to sell 100  
BOX Book Interest to buy 20 at \$2.02  
BOX Book Interest to sell 10 at \$2.10  
Complex Order to buy 20 at \$2.00

Subsequently, during the COPIP, two competing Improvement Orders are received: One Improvement Order to buy 10 A+B at \$2.05 and one Improvement Order to buy 15 A+B at \$2.03. Also, the BOX Book Interest changes to buy 40 A+B at \$2.03. The orders for Strategy A+B then are as follows:

**Orders for Strategy A+B:**

Improvement Order to buy 10 at \$2.05  
COPIP Order to sell 100  
Improvement Order to buy 15 at \$2.03  
BOX Book Interest to sell 10 at \$2.10  
BOX Book Interest to buy 40 at \$2.03  
Primary Improvement Order to buy 100 at \$2.02  
Complex Order to buy 20 at \$2.00

Subsequently, during the COPIP, the BOX Book Interest changes to sell 5 A+B at \$2.05. Because the BOX Book Interest to sell 5 A+B at \$2.05 could execute against the Improvement Order to buy 10 A+B at \$2.05, the COPIP instead terminates early and executes.

The allocation of Strategies for execution with the COPIP Order to sell 100 A+B at the early termination of the COPIP is as follows:

**Allocation for Execution of COPIP Order to Sell 100 A+B:**

Improvement Order to buy 10 at \$2.05  
BOX Book Interest to buy 40 at \$2.03 (at this point, the next best available BOX Book Interest is to buy 20 at \$2.02)  
Improvement Order to buy 15 at \$2.03  
BOX Book Interest to buy 20 at \$2.02 (at this point, the next best available BOX Book Interest is to buy 10 at \$2.00)  
Primary Improvement Order to buy 15 at \$2.02

The BOX Book Interest to sell 5 A+B at \$2.05 caused the COPIP to terminate early<sup>50</sup> and cannot execute because it is on the same side as the COPIP Order and, after early termination and

<sup>49</sup> The Exchange proposes that an Unrelated Order on the same side as the COPIP Order would cause the COPIP auction to terminate early. Because the COPIP auction already was in progress before the Unrelated Order arrived on BOX, the Exchange proposes that the COPIP order be executed first. The Exchange notes that this proposed process is the same as the process in the PIP. See Rule 7150(i).

<sup>50</sup> The Exchange proposes that an Unrelated Order on the same side as the COPIP Order would cause the COPIP auction to terminate early. Because the COPIP auction already was in progress before the Unrelated Order arrived on BOX, the Exchange proposes that the COPIP order be executed first. The Exchange notes that this proposed process is the same as the process in the PIP. See Rule 7150(i).

<sup>48</sup> See proposed Rule 7245(h).

execution of the COPIP, no executable buy-side interest at that price exists. As a result, the BOX Book Interest is entered on the Complex Order Book as an Implied Order. The Complex Order Book for Strategy A+B then is as follows:

**Complex Order Book for Strategy A+B:**

BOX Book Interest to buy 10 at \$2.00  
 BOX Book Interest to sell 5 at \$2.05  
 Complex Order to buy 20 at \$2.00  
 cNBBO is \$2.00 bid, \$2.05 offered.

\* \* \* \* \*

In cases where an Unrelated Order that is a non-Improvement Order is submitted to BOX on the opposite side of the COPIP order, such that it would cause an execution to occur prior to the end of the COPIP, the non-Improvement Order will be immediately executed against the COPIP Order up to the lesser of the size of the COPIP Order or the size of the non-Improvement Order, at a price equal to either: (i) At least one penny better than the cBBO, if the cBBO on the opposite side of the market from the non-Improvement Order is equal to or better than the cNBBO at the time of execution; or (ii) the cNBBO. Specifically, a BOX-Top Complex Order or a Market Complex Order on the opposite side of a COPIP Order will immediately execute against the COPIP Order when, at the time of the submission of such Complex Order, the best Improvement Order does not cross the cNBBO on the same side of the market as the COPIP Order. The submission to BOX of an executable Limit Complex Order on the opposite side of a COPIP Order will immediately execute against a COPIP Order when the Limit Complex Order price is equal to or crosses any of the cNBBO, cBBO or BBO on the Complex Order Book for the Strategy.<sup>51</sup> In cases where an Unrelated Order that is a BOX Book Interest exists on the opposite side of the COPIP order, such that it would cause an execution to occur prior to the end of the COPIP, the BOX Book Interest will immediately be executed against the COPIP Order up to the lesser of the size of the COPIP Order or the size of the BOX Book Interest, at a price equal to the BOX Book Interest price.<sup>52</sup> The remainder of the Unrelated Order, if any, will be filtered according to the existing Complex Order filter rules.<sup>53</sup> The remainder of the COPIP Order, if any, will be executed at the conclusion of the COPIP as described above.<sup>54</sup> Following

the conclusion of the COPIP, any remaining Improvement Orders are cancelled.<sup>55</sup>

**Example 9: Immediate Execution of Unrelated Order Opposite COPIP Order**

**Example 9(a):**

For example, suppose the Complex Order Book for Strategy A+B is initially as follows:

**Orders for Strategy A+B:**

BOX Book Interest to buy 10 at \$2.00  
 Exposed<sup>56</sup> Complex Order to sell 10 at \$2.08  
 Complex Order to buy 20 at \$2.00  
 BOX Book Interest to sell 10 at \$2.10  
 cNBBO is \$2.00 bid, \$2.10 offered

A BOX Participant then initiates a COPIP Order to sell 100 A+B. The COPIP Order is opposite the Participant's Primary Improvement Order. The orders for Strategy A+B then are as follows:

**Orders for Strategy A+B:**

Primary Improvement Order to buy 100 at \$2.01  
 COPIP Order to sell 100  
 BOX Book Interest to buy 10 at \$2.00  
 Exposed Complex Order to sell 10 at \$2.08  
 Complex Order to buy 20 at \$2.00  
 BOX Book Interest to sell 10 at \$2.10

During the COPIP, two competing Improvement Orders are received: One Improvement Order to buy 30 A+B at \$2.04 and one Improvement Order to buy 50 A+B at \$2.03. The Primary Improvement Order to buy 100 A+B has improved to \$2.03. Also, the BOX Book Interest changes to buy 40 A+B at \$2.03. The orders for Strategy A+B then are as follows:

**Orders for Strategy A+B:**

Improvement Order to buy 30 at \$2.04  
 COPIP Order to sell 100  
 Primary Improvement Order to buy 100 at \$2.03  
 BOX Book Interest to buy 40 at \$2.03  
 Exposed Complex Order to sell 10 at \$2.08  
 Improvement Order to buy 50 at \$2.03  
 BOX Book Interest to sell 10 at \$2.10  
 Complex Order to buy 20 at \$2.00

Subsequently, during the COPIP, the BOX Book Interest changes to buy 8 A+B at \$2.08. Because this BOX Book Interest is executable against the exposed Complex Order to sell 10 at

\$2.08, the BOX Book Interest to buy 8 A+B immediately executes against the COPIP Order to sell 10 and the COPIP continues.

The orders for Strategy A+B at the end of the COPIP then are as follows:

**Orders for Strategy A+B:**

Improvement Order to buy 30 at \$2.04  
 COPIP Order to sell 92  
 Primary Improvement Order to buy 100 at \$2.03  
 BOX Book Interest to buy 32 at \$2.03  
 Exposed Complex Order to sell 10 at \$2.08  
 Improvement Order to buy 50 at \$2.03  
 BOX Book Interest to sell 10 at \$2.10  
 Complex Order to buy 20 at \$2.00

**Note:** If the BOX Book had changed to reflect BOX Book Interest to buy a quantity of 100 A+B at \$2.04, the BOX Book Interest would have immediately executed against the COPIP Order in full and the COPIP would have terminated.

**Example 9(b):**

For example, suppose the Complex Order Book for Strategy A+B is initially as follows:

**Orders for Strategy A+B:**

BOX Book Interest to buy 10 at \$2.00  
 Exposed Complex Order to sell 10 at \$2.08  
 Complex Order to buy 20 at \$2.00  
 BOX Book Interest to sell 10 at \$2.10  
 cNBBO is \$2.00 bid, \$2.10 offered.

A BOX Participant then initiates a COPIP Order to sell 100 A+B. The COPIP Order is opposite the Participant's Primary Improvement Order. The orders for Strategy A+B then are as follows:

**Orders for Strategy A+B:**

Primary Improvement Order to buy 100 at \$2.01  
 COPIP Order to sell 100  
 BOX Book Interest to buy 10 at \$2.00  
 Exposed Complex Order to sell 10 at \$2.08  
 Complex Order to buy 20 at \$2.00  
 BOX Book Interest to sell 10 at \$2.10

During the COPIP, two competing Improvement Orders are received: One Improvement Order to buy 30 A+B at \$2.04 and one Improvement Order to buy 50 A+B at \$2.03. The Primary Improvement Order has improved to \$2.03. Also, the BOX Book Interest changes to buy 40 A+B at \$2.03. The orders for Strategy A+B at the end of the COPIP then are as follows:

**Orders for Strategy A+B:**

Improvement Order to buy 30 at \$2.04  
 COPIP Order to sell 100  
 Primary Improvement Order to buy 100 at \$2.03

<sup>51</sup> See proposed Rule 7245(i)(1).

<sup>52</sup> See proposed Rule 7245(i)(2).

<sup>53</sup> See Rule 7240(b)(3)(iii) for existing Complex Order filter rules.

<sup>54</sup> Execution rules are set forth in proposed Rule 7245(f)(3).

<sup>55</sup> See proposed Rule 7245(i)(3).

<sup>56</sup> An "exposed" Complex Order is a Complex Order that is in the process of being exposed to Participants pursuant to Rule 7240(b)(3)(iii) prior to being entered on the Complex Order Book. Pursuant to Rule 7240(c), Legging Orders are not generated from Complex Orders during the exposure period.

BOX Book Interest to buy 40 at \$2.03  
Exposed Complex Order to sell 10 at \$2.08

Improvement Order to buy 50 at \$2.03  
BOX Book Interest to sell 10 at \$2.10  
Complex Order to buy 20 at \$2.00

Subsequently, during the COPIP, a Complex Order to buy 8 A+B at \$2.08 is received. Because the Complex Order is executable against the exposed Complex Order to sell 10 A+B at \$2.08, the Complex Order to buy 8 A+B at \$2.08 immediately executes against the COPIP Order at \$2.07 and the COPIP then continues.<sup>57</sup>

The orders for Strategy A+B at the end of the COPIP then are as follows:

#### Orders for Strategy A+B:

Improvement Order to buy 30 at \$2.04  
COPIP Order to sell 92  
Primary Improvement Order to buy 100 at \$2.03

BOX Book Interest to buy 40 at \$2.03  
Exposed Complex Order to sell 10 at \$2.08

Improvement Order to buy 50 at \$2.03  
BOX Book Interest to sell 10 at \$2.10  
Complex Order to buy 20 at \$2.00

**Note:** If the BOX Book had changed to reflect BOX Book Interest to buy a quantity of 100 A+B at \$2.04, the BOX Book Interest would have immediately executed against the COPIP Order in full and the COPIP would have terminated.

\* \* \* \* \*

#### Improvement Orders

Improvement Orders on a COPIP are treated substantially the same as the Exchange's existing PIP<sup>58</sup> with necessary changes to account for differences between Complex Orders and orders on single series options instruments. Improvement Orders must be submitted in increments no smaller than one penny. Improvement Orders will be broadcast via the HSVF, but will not be disseminated to OPRA.<sup>59</sup>

Generally, Improvement Orders may not be executed unless the price is equal to or better than the cNBBO at the commencement of the COPIP. An exception to this rule occurs where an Exchange Official determines that quotes from one or more particular markets in one or more classes of options are not reliable, the Exchange Official may direct the senior person in charge of the BOX MOC to exclude the unreliable quotes from the Improvement Period determination of the cNBBO for

Complex Order Strategies of which such option class(es) are a component. The Exchange Official may determine quotes in one or more particular options classes in a market are not reliable only in the following circumstances: (i) Quotes Not Firm: A market's quotes in a particular options class are not firm based upon direct communication to the Exchange from the market or the dissemination through OPRA of a message indicating that disseminated quotes are not firm; (ii) Confirmed Quote Problems: A market has directly communicated to the Exchange or otherwise confirmed that the market is experiencing systems or other problems affecting the reliability of its disseminated quotes. An exception to the general rule also occurs where the away options exchange posting orders on a single option series comprising the cNBBO is conducting a trading rotation in that options class.<sup>60</sup>

As in the PIP,<sup>61</sup> the Exchange's Trading Host will not accept Improvement Orders that lock or cross the Complex Order Book on the same side of the market as the COPIP Order.<sup>62</sup>

#### COPIP Trading Conduct

As with the PIP,<sup>63</sup> the Exchange proposes to prohibit conduct inconsistent with just and equitable principles of trade related to a COPIP. It is proposed that it be considered conduct inconsistent with just and equitable principles of trade for any Initiating Participant to engage in a pattern of conduct where the Initiating Participant submits Primary Improvement Orders into the COPIP process for two Strategies or less for the purpose of manipulating the COPIP process in order to gain a higher allocation percentage than the Initiating Participant would have otherwise received in accordance with the proposed allocation procedures. It is proposed that it be considered conduct inconsistent with just and equitable principles of trade for any Participant to submit a non-Improvement Order, or an order that results in the generation of an Unrelated Order, to BOX for the purpose of disrupting or manipulating the COPIP process.<sup>64</sup>

#### Overlapping Auctions

The Exchange proposes to prohibit multiple auctions of the same type, which is substantially the same as in its PIP rules.<sup>65</sup> A COPIP will not run

simultaneously with another COPIP in the same Complex Order Strategy, nor will COPIPs interact, queue or overlap in any manner. Any request to initiate a COPIP while a COPIP is already in progress in the same Strategy will be rejected.<sup>66</sup>

Upon adoption of the proposal, the Exchange will operate price improvement auctions in both single options series and Complex Orders. The Exchange proposes that BOX will accept, however, orders designated for the PIP on a single option series where a COPIP on a Complex Order Strategy that includes such series may be in progress. BOX will also accept Complex Orders designated for the COPIP where a PIP on either of the component series may be in progress.<sup>67</sup> Order execution at the conclusion of such PIPs will occur as described in the PIP rules<sup>68</sup> and Complex Order execution at the conclusion of such COPIPs will occur as set forth in the proposed Rule 7245.<sup>69</sup>

#### COPIP Pilot Program

The Exchange proposes a COPIP Pilot Program during the initial period of the COPIP's operation. During the COPIP pilot period, the Exchange proposes to provide certain information, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size COPIP orders, that there is significant price improvement for all orders executed through the COPIP and that an active and liquid market is functioning on BOX outside of the COPIP mechanism. Any data submitted to the Commission by the Exchange will be provided on a confidential basis.<sup>70</sup> The Pilot Period is proposed to expire on July 18, 2014 and will be substantially similar to the pilot period currently in place with respect to the existing PIP.<sup>71</sup>

To aid the Commission in its evaluation of the COPIP Pilot Program, the Exchange proposes to provide the following information each month: (1) The number of orders of 50 Strategies or greater entered into the COPIP; (2) the percentage of all orders of 50 Strategies or greater submitted to the Exchange that are entered into the COPIP; (3) the spread, at the time a Complex Order of

<sup>66</sup> See proposed IM-7245-3.

<sup>67</sup> Exchange rules governing events occurring during permitted, simultaneous auctions are clear. Processes on the BOX system are sequential, which prevents any two orders (including PIP Orders and COPIP Orders) from having the same time stamp. Each order is processed in accordance with Exchange rules without race conditions.

<sup>68</sup> PIP execution rules are set forth in Rule 7150.

<sup>69</sup> See proposed IM-7245-3.

<sup>70</sup> See proposed IM-7245-1.

<sup>71</sup> See IM-7150-1.

<sup>57</sup> This operation is consistent with the existing PIP auction mechanism (see Rule 7150(j)) and execution at \$2.07 is consistent with Rule 7240(b)(2).

<sup>58</sup> See Rule 7150(k).

<sup>59</sup> See proposed Rule 7245(j).

<sup>60</sup> See proposed Rule 7245(k).

<sup>61</sup> See IM-7150-4.

<sup>62</sup> See proposed IM-7245-4.

<sup>63</sup> See IM-7150-2.

<sup>64</sup> See proposed IM-7245-2.

<sup>65</sup> See IM-7150-3.

50 Strategies or greater is submitted to the COPIP; (4) the percentage of COPIP trades executed at cNBBO, plus \$.01, plus \$.02, plus \$.03, etc.; and (5) the number of COPIP Orders submitted by OFPs when the spread was at a particular increment (e.g., \$.05, \$.10, \$.15, etc.). Also, with respect to item 5 above, for each spread increment, the Exchange proposes to provide the percentage of orders of fewer than 50 Strategies submitted to the COPIP that were traded: (a) By the OFP that submitted the order to the COPIP; (b) by a BOX Participant other than the OFP that submitted the order to the COPIP; (c) by a Public Customer; and (d) as an Unrelated Order. Additionally, for each spread increment, the Exchange proposes to provide the percentage of orders of 50 Strategies or greater submitted to the COPIP that were traded: (a) By the OFP that submitted the order to the COPIP; (b) by a BOX Participant other than the OFP that submitted the order to the COPIP; (c) by a Public Customer; and (d) as an Unrelated Order.

The Exchange further proposes to provide, for the first and third Wednesday of each month: (a) The total number of COPIP auctions on that date; (b) the number of COPIP auctions where the order submitted to the COPIP was fewer than 50 Strategies; (c) the number of COPIP auctions where the order submitted to the COPIP was 50 Strategies or greater; (d) the number of COPIP auctions where the number of Participants (excluding the Initiating Participant) was each of zero, one, two, three, four, etc.

Finally, during the COPIP pilot period, the Exchange proposes to provide information each month with respect to situations in which the COPIP is terminated prematurely or in which a Market Order, Limit Order, BOX-Top Order or BOX Book Interest immediately execute with a COPIP Order before the conclusion of the COPIP. The following information is proposed to be provided: (1) The number of times that a Market Order, Limit Order, BOX-Top Order or BOX Book Interest on the same side of the market as the COPIP Order prematurely terminated the COPIP, and (a) the number of times such orders were entered by the same (or affiliated) firm that initiated the COPIP that was terminated, and (b) the number of times such orders were entered by a firm (or an affiliate of such firm) that participated in the execution of the COPIP Order; (2) For the orders addressed in each of (1)(a) and (1)(b) above, the percentage of COPIP premature terminations due to the

receipt, during the COPIP, of a Market Order, Limit Order, BOX-Top Order or BOX Book Interest on the same side of the market as the COPIP Order; and the average amount of price improvement provided to the COPIP Order where the COPIP is prematurely terminated; (3) the number of times that a Market Order, Limit Order, BOX-Top Order or BOX Book Interest on the opposite side of the market as the COPIP Order immediately executed against the COPIP Order, and (a) the number of times such orders were entered by the same (or affiliated) firm that initiated the COPIP, and (b) the number of times such orders were entered by a firm (or an affiliate of such firm) that participated in the execution of the COPIP Order; (4) for the orders addressed in each of (3)(a) and (3)(b) above, the percentage of COPIP early executions due to the receipt, during the COPIP, of a Market Order, Limit Order, BOX-Top Order or BOX Book Interest on the opposite side of the market as the COPIP Order; and the average amount of price improvement provided to the COPIP Order where the COPIP Order is immediately executed; and (5) the average amount of price improvement provided to the COPIP Order when the COPIP runs for one hundred milliseconds.

#### Conforming and Clarifying Changes

The Exchange proposes to make certain miscellaneous conforming and clarifying changes to its rules consistent with the adoption of the proposed COPIP rule. These conforming and clarifying changes are consistent with the Exchange's treatment of the PIP. Rules 100, 3000, 7070, 7110, 7130, 7140, 7150, and 7240 are proposed to be amended as described below.

Rule 3000(b) is proposed to be amended to include COPIPs to be treated similarly to PIPs for purposes of identifying conduct inconsistent with just and equitable principles of trade.

Rule 7070(a) is proposed to be amended to clarify that COPIP Orders, like PIP Orders, are not accepted by the BOX Trading Host during the Pre-Opening Phase. Rule 7070(a) is also corrected to reflect that Fill and Kill orders are not, and have never been, allowed to participate in the Pre-Opening Phase. Participation in the Pre-Opening Phase on BOX is entirely voluntary and the inclusion of Fill and Kill orders could be disruptive to the calculation of the Theoretical Opening Price, which is described in Rule 7070(b).

Rule 7110(e)(1)(iii)(D) is proposed to be amended to clarify that, like PIP Orders, the Session Order duration type is not available for COPIP Orders.

Rule 7130(a) is proposed to be amended to clarify that the HSVF, which is made available at no cost to all market participants, includes COPIP Order information as set forth in proposed Rule 7245.

IM-7140-1, IM-7140-2, IM-7140-3 and IM-7140-4 to Rule 7140 are proposed to be amended to clarify that COPIPs are treated like PIPs for purposes of Rule 7140 regarding the ability of Options Participants to act as contra party to their own Customer Orders.

The proposed amendments to Rule 7150(f) and (k) regarding the PIP do not change the operation of the Exchange's system but conform to the proposed COPIP rule and clarify that the PIP Broadcast, including competing Improvement Orders, are broadcast via the HSVF. Further, IM-7150-3 to Rule 7150 is proposed to be amended to conform to proposed IM-7245-3 to Rule 7245 and to clarify that a PIP on a single option series and a COPIP on a Complex Order Strategy that includes such series may be conducted simultaneously.

In order to conform to the new proposed COPIP rules, Rule 7240(b)(4)(iii) is proposed to be amended to remove the existing prohibition on Complex Orders participating in Price Improvement Periods and Rule 100(a)(19) is amended to clarify that Directed Orders are limited to contracts on single option series.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>72</sup> in general, and Section 6(b)(5) of the Act,<sup>73</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange proposes to add new BOX Rule 7245 to allow Complex Orders to be submitted to the COPIP in substantially the same manner as orders for single options series instruments currently are submitted to the PIP except as necessary to account for

<sup>72</sup> 15 U.S.C. 78f(b).

<sup>73</sup> 15 U.S.C. 78f(b)(5).

distinctions between regular orders on the BOX Book and Complex Orders.<sup>74</sup>

The Exchange believes the proposed COPIP is an improvement over its current rules regarding Complex Orders, and will benefit all market participants submitting Complex Order to BOX. The Exchange believes that this rule filing is reasonable, equitable and not unfairly discriminatory to customers and Participants because it follows the fundamental principles of the Exchange's existing PIP mechanism<sup>75</sup> and the Exchange's existing Complex Order priority rules,<sup>76</sup> each of which has previously been approved by the Commission. The Exchange further believes the proposal is not unfairly discriminatory because the benefits of the proposed COPIP on BOX, like the PIP, are equally available to all Participants.

The Exchange believes this proposal will increase opportunities for execution of Complex Orders and orders on the BOX Book. Further, the Exchange believes the proposed COPIP will provide greater flexibility to Participants trading Complex Orders on BOX. The Exchange also believes the proposed COPIP will provide additional opportunities for Participants to achieve better handling of Complex Orders and result in increased opportunities for execution and better pricing. These benefits have been realized for orders on single option series under its existing PIP mechanism and the same principles are expected to transfer readily to Complex Orders. As a result, adopting this proposal to allow a COPIP mechanism will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

For purposes of the COPIP, Unrelated Orders are proposed to include BOX Book Interest resting on the BOX Book.<sup>77</sup> The concept of the COPIP interacting with BOX Book Interest does not apply to PIP and, therefore, is not directly analogous the existing PIP rules. Quotes and Legging Orders do not apply to COPIP and, therefore, are not included in the proposed COPIP rules. These proposed differences from the

previously approved PIP provide clarity in the rules and promote just and equitable principles of trade.

The proposal requires that Complex Orders on BOX execute first against leg orders on the BOX Book, as under the current rules applicable to Complex Order execution. In the proposed COPIP, BOX Book Interest will execute in priority over Complex Orders at the same price<sup>78</sup> so as to preserve the already established and approved execution priority of interest on the BOX Book over Complex Orders.<sup>79</sup> These execution principles allow Complex Orders to interact with the BOX Book in a fair way and thereby promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities and remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed COPIP rules differ from the existing PIP rules in that, for purposes of calculating the Initiating Participant's priority allocation, BOX Book Interests are proposed to be counted as competing orders in a COPIP. This treatment is consistent with the existing regular interaction of Complex Orders with interest on the BOX Book.<sup>80</sup> This again preserves the already established and approved execution priority of interest on the BOX Book over Complex Orders while also preserving the incentive function of the Initiating Participant's priority allocation as in the existing PIP rules. This execution priority is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Upon adoption of the proposal, the Exchange will operate price improvement auctions in both single options series and Complex Orders.<sup>81</sup> As with the PIP, the Exchange will not operate multiple, simultaneous COPIPs on the same Strategy. However, the Exchange proposes that BOX will accept orders designated for the PIP on a single option series where a COPIP on a

Complex Order Strategy that includes such series may be in progress. BOX will also accept Complex Orders designated for the COPIP where a PIP on either of the component series may be in progress. Order execution at the conclusion of such PIPs will occur as described in the PIP rules<sup>82</sup> and Complex Order execution at the conclusion of such COPIPs will occur as set forth in the proposed Rule 7245.<sup>83</sup> The Exchange believes this simultaneous price improvement auction functionality will reduce order cancellation and, thereby remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

The Exchange proposes that, as in the PIP, when executing Customer Complex Orders by way of the COPIP, Options Participants must ensure that they comply with all the procedures set forth in these Rules for such transactions; that they act with due skill, care and diligence; and that the interests of their Customers are not prejudiced.<sup>84</sup> An Options Participant must not use the COPIP process to create a misleading impression of market activity (i.e., the facilities may be used only where there is a genuine intention to execute a bona fide transaction).<sup>85</sup> These provisions are substantially the same as the corresponding rules for the PIP<sup>86</sup> and are important customer protection features that prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and protect investors and the public interest.<sup>87</sup>

All market participants are able to receive broadcast notification of COPIPs and Improvement Orders via the HSVF. As a result, no Participants will have an information advantage and the proposal serves to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange proposes to make certain miscellaneous conforming and clarifying changes to Rules 100, 3000, 7070, 7110, 7130, 7140, 7150, and 7240 to make them consistent with the adoption of the proposed COPIP rule. These conforming and clarifying changes are required to make the COPIP

<sup>74</sup> The Exchange notes that the provisions in proposed Rule 7245 are substantially similar to those in Rule 7150, amended to reflect their applicability to a COPIP on a Complex Order Strategy as compared to a PIP on orders for single options series instruments.

<sup>75</sup> See Rule 7150.

<sup>76</sup> See Rule 7240(b)(3)(i).

<sup>77</sup> See proposed Rule 7245(a).

<sup>78</sup> See proposed Rule 7245(f)(3)(i).

<sup>79</sup> The execution priority of interest on the BOX Book over Complex Orders is consistent with existing Rule 7240(b)(3)(i).

<sup>80</sup> See proposed Rule 7245(g)(1) and (2).

<sup>81</sup> Exchange rules governing events occurring during permitted, simultaneous auctions are clear. Processes on the BOX system are sequential, which prevents any two orders (including PIP Orders and COPIP Orders) from having the same time stamp. Each order is processed in accordance with Exchange rules without race conditions.

<sup>82</sup> PIP execution rules are set forth in Rule 7150.

<sup>83</sup> See proposed IM-7245-3.

<sup>84</sup> See proposed Rule 7245(c).

<sup>85</sup> See proposed Rule 7245(e).

<sup>86</sup> See Rule 7150(c), (d) and (e).

<sup>87</sup> The proposed COPIP rules are similar to the Exchange's existing PIP rules. As a result, the Exchange believes an analysis of Section 11(a) of the Securities Exchange Act of 1934 is not warranted here.

rules consistent with the Exchange's PIP rules and are necessary to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

For the foregoing reasons, the Exchange believes this proposal is a reasonable modification to its rules, designed to facilitate increased interaction of Complex Orders on the Exchange, and to do so in a manner that ensures a dynamic, real-time trading mechanism that maximizes opportunities for trade executions for Complex Orders. The Exchange believes it is appropriate and consistent with the Act to adopt the proposed rule changes.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe the proposed rule change represents any undue burden on competition or will impose any burden on competition among exchanges in the listed options marketplace not necessary or appropriate in furtherance of the purposes of the Act. Subject to the priority rules described above, the features of the proposed rule change will apply equally to all Participants and are available to all Participants.

Submitting a Complex Order to the COPIP will be entirely voluntary and Participants will determine whether they wish to submit COPIP Orders to the Exchange. The Exchange operates in a highly competitive marketplace with other competing exchanges and market participants can readily direct their Complex Order flow to other exchanges if they so choose.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2013-43 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BOX-2013-43. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method.

The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2013-43, and should be submitted on or before October 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>88</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2013-23008 Filed 9-20-13; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[File No. 500-1]

### **Home System Group, Order of Suspension of Trading**

September 19, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Home System Group because Home System Group has not filed any periodic reports for any reporting period subsequent to December 31, 2011.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, September 19, 2013, through 11:59 p.m. EDT, on October 2, 2013.

By the Commission.

**Jill M. Peterson,**  
*Assistant Secretary.*

[FR Doc. 2013-23144 Filed 9-19-13; 4:15 pm]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[File No. 500-1]

### **American Asset Development, Inc., aVinci Media Corp., Ceragenix Pharmaceuticals, Inc., Marshall Holdings International, Inc., MedCom USA, Incorporated, and Millenium Holding Group, Inc., Order of Suspension of Trading**

September 19, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Asset Development, Inc. because it has not filed any periodic reports since the period ended December 31, 2009.

It appears to the Securities and Exchange Commission that there is a

<sup>88</sup> 17 CFR 200.30-3(a)(12).

lack of current and accurate information concerning the securities of aVinci Media Corp. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ceragenix Pharmaceuticals, Inc. because it has not filed any periodic reports since the period ended December 31, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Marshall Holdings International, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MedCom USA, Incorporated because it has not filed any periodic reports since the period ended December 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Millenium Holding Group, Inc. because it has not filed any periodic reports since the period ended December 31, 2006.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 19, 2013, through 11:59 p.m. EDT on October 2, 2013.

By the Commission.

**Jill M. Peterson,**  
Assistant Secretary.

[FR Doc. 2013-23143 Filed 9-19-13; 4:15 pm]

**BILLING CODE P**

## DEPARTMENT OF STATE

[Public Notice 8477]

### 30-Day Notice of Proposed Information Collection: Nonimmigrant Fiance(e) Visa Application

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the

Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

**DATES:** Submit comments directly to the Office of Management and Budget (OMB) up to October 23, 2013.

**ADDRESSES:** Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email:* [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202-395-5806. Attention: Desk Officer for Department of State.

#### FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Sydney Taylor, Visa Services, U.S. Department of State, 2401 E Street NW., L-603, Washington, DC 20522, who may be reached at [PRA\\_BurdenComments@state.gov](mailto:PRA_BurdenComments@state.gov).

#### SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Nonimmigrant Fiance(e) Visa Application
- *OMB Control Number:* OMB-1405-0096
- *Type of Request:* Extension of a Currently Approved Collection
- *Originating Office:* CA/VO/L/R
- *Form Number:* DS-156K
- *Respondents:* Foreign Nationals applying for a nonimmigrant visa to enter the United States as the fiancé(e)
- *Estimated Number of Respondents:* 35,000
- *Estimated Number of Responses:* 35,000
- *Average Time Per Response:* 1 hour
- *Total Estimated Burden Time:* 35,000
- *Frequency:* Once per respondent
- *Obligation to Respond:* Required to Obtain Benefit

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

#### Abstract of proposed collection:

Form DS-156K will be used by consular officers to determine the eligibility of a foreign national for a non-immigrant fiancé(e) visa under INA section 101(a)(15)(K) [8 U.S.C. 1101].

#### Methodology:

Department of State consular officers use Form DS-156K (Nonimmigrant Fiance(e) Visa Application), in conjunction with a personal interview, to determine this eligibility of an alien applicant for a non-immigrant fiancé(e) visa.

Dated: September 10, 2013.

**Edward J. Ramotowski,**

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2013-23078 Filed 9-20-13; 8:45 am]

**BILLING CODE 4710-06-P**

## DEPARTMENT OF STATE

[Public Notice 8476]

### 30-Day Notice of Proposed Information Collection: Application for a U.S. Passport: Name Change, Data Correction, and Limited Passport Book Replacement

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

**DATES:** Submit comments directly to the Office of Management and Budget (OMB) up to October 23, 2013.

**ADDRESSES:** Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

• *Email:* [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov). You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.

• *Fax:* 202-395-5806. Attention: Desk Officer for Department of State.

#### FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to U.S. Department of State, Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, 2201 C Street NW., Washington, DC 20520, who may be reached on (202) 485-6510 or at [PPTFormsOfficer@state.gov](mailto:PPTFormsOfficer@state.gov).

#### SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Application for a U.S. Passport: Name Change, Data Correction, and Limited Passport Book Replacement.

• *OMB Control Number:* 1405-0160.

• *Type of Request:* Revision of a Currently Approved Collection.

• *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, Program Coordination Division (CA/PPT/S/PMO/PC).

• *Form Number:* DS-5504.

• *Respondents:* Individuals or Households.

• *Estimated Number of Respondents:* 114,637 respondents per year.

• *Estimated Number of Responses:* 114,637 responses per year.

• *Average Time per Response:* 30 minutes per response.

• *Total Estimated Burden Time:* 57,319 hours per year.

• *Frequency:* On occasion.

• *Obligation To Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public

record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

#### Abstract of Proposed Collection

Under 22 United States Code (U.S.C.) Section 211a *et seq.* and Executive Order 11295 (August 5, 1966), the Secretary of State has authority to issue U.S. passports to U.S. citizens and non-citizen nationals. When the bearer of a valid U.S. passport applies for a new passport book and/or passport card with corrected personal data or when the bearer of a limited validity passport applies for a fully-valid replacement passport, the Department must confirm the applicant's identity and eligibility to receive passport services before the Department can issue the corrected or replacement passport to the applicant. Form DS-5504 requests information that is necessary to determine whether the applicant is eligible to receive this service in accordance with the requirements of Title III of the Immigration and Nationality Act (INA) (U.S.C. sections 1402-1504), the regulations at 22 CFR parts 50 and 51, and other applicable treaties and laws.

#### Methodology

Passport Services collects information from U.S. citizens and non-citizen nationals when they complete and submit the Application for a U.S. Passport: Name Change, Data Correction, and Limited Passport Book Replacement. Passport applicants can either download the DS-5504 from the internet or obtain one from an Acceptance Facility/Passport Agency. The form must be completed, signed, and submitted along with the applicant's valid U.S. passport and supporting documents for corrective action.

Dated: September 10, 2013.

**Brenda S. Sprague,**

*Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.*

[FR Doc. 2013-23090 Filed 9-20-13; 8:45 am]

BILLING CODE 4710-06-P

#### DEPARTMENT OF STATE

[Public Notice 8478]

#### Culturally Significant Objects Imported for Exhibition Determinations: "Peru: Kingdoms of the Sun and the Moon"

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C.

2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "Peru: Kingdoms of the Sun and the Moon," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Seattle Art Museum, Seattle, WA, from on or about October 17, 2013, until on or about January 5, 2014, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6467). The mailing address is U.S. Department of State, SA-5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522-0505.

Dated: September 16, 2013.

**Lee Satterfield,**

*Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2013-23085 Filed 9-20-13; 8:45 am]

BILLING CODE 4710-05-P

#### OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS464]

#### WTO Dispute Settlement Proceeding Regarding Anti-Dumping and Countervailing Measures on Large Residential Washers From Korea

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative ("USTR") is providing notice that on August 29, 2013, the Republic of Korea ("Korea") requested consultations with the United States under the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement") concerning antidumping and

countervailing duty measures regarding large residential washers (“washers”) from Korea. That request may be found at [www.wto.org](http://www.wto.org) in a document designated as WT/DS464/1. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before October 11, 2013, to be assured of timely consideration by USTR.

**ADDRESSES:** Public comments should be submitted electronically to [www.regulations.gov](http://www.regulations.gov), docket number USTR–2013–0031. If you are unable to provide submissions by [www.regulations.gov](http://www.regulations.gov), please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

**FOR FURTHER INFORMATION CONTACT:** J. Daniel Stirk, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508, (202) 395–3150.

**SUPPLEMENTARY INFORMATION:** USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel would hold its meetings in Geneva, Switzerland.

### Major Issues Raised by Korea

On August 29, 2013, Korea requested consultations concerning antidumping and countervailing duty measures on washers from Korea. With respect to the antidumping measures, Korea challenges any determination by the Department of Commerce (“Commerce”) in which Commerce has applied or may apply a methodology that Korea describes as “zeroing.” Korea’s challenge includes the completed antidumping investigation of washers from Korea, as well as future preliminary and final determinations in administrative reviews, new shipper reviews, sunset reviews and changed circumstances reviews. Korea also challenges any determination by Commerce in the washers antidumping proceeding in which Commerce has applied or may apply the second sentence of Article 2.4.2 of the *Agreement on Implementation of Article*

*VI of the GATT 1994* (“AD Agreement”) so as to use a methodology that Korea describes as “zeroing.”

In addition, Korea challenges what it describes as “[t]he United States’ methodology of ‘zeroing’ as such when using the weighted average-to-transaction comparison methodology in anti-dumping investigations, administrative reviews and other segments of anti-dumping proceedings.” Korea also challenges Commerce’s “methodology for applying the second sentence of Article 2.4.2 as such.”

With respect to the countervailing duty measures on washers from Korea, Korea challenges Commerce’s determination that Article 10(1)(3) of Korea’s Restriction of Special Taxation Act (“RSTA”) is a subsidy that is specific within the meaning of Article 2.1 of the Agreement on Subsidies and Countervailing Measures (“SCM Agreement”), and Commerce’s determination of the amount of subsidy benefit received by a respondent.

Korea also challenges Commerce’s determination that Article 26 of the RSTA is a regionally specific subsidy, and Commerce’s imposition of countervailing duties on one respondent that were attributable to tax credits that the respondent received for investments that it made under Article 26 of the RSTA.

Finally, Korea challenges Commerce’s treatment of the Korea Development Bank (“KDB”) and Industrial Bank of Korea (“IBK”) as public bodies within the meaning of Article 1.1(a)(1)(i) of the SCM Agreement as well as Commerce’s determination that “the financing provided by the KDB and IBK were commercially unreasonable and thus conferred benefit within the meaning of [Article 1.2 and Article 14 of the SCM Agreement].”

Korea alleges inconsistencies with Articles 1, 2, 2.1, 2.4, 2.4.2, 5.8, 9.3, 9.4, 9.5, 11, and 18.4 of the AD Agreement, Articles 1.1, 1.2, 2.1, 2.2, 10, 14, and 19.4 of the SCM Agreement, Articles VI, VI:1, VI:2, and VI:3 of the *General Agreement on Tariffs and Trade 1994* (“GATT 1994”), and Article XVI:4 of the WTO Agreement.

### Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to [www.regulations.gov](http://www.regulations.gov) docket number USTR–2013–0031. If you are unable to provide submissions by [www.regulations.gov](http://www.regulations.gov), please contact Sandy McKinzy at (202) 395–9483 to

arrange for an alternative method of transmission.

To submit comments via [www.regulations.gov](http://www.regulations.gov), enter docket number USTR–2013–0031 on the home page and click “search”. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting “Notice” under “Document Type” on the left side of the search-results page, and click on the link entitled “Submit a Comment” (For further information on using the [www.regulations.gov](http://www.regulations.gov) Web site, please consult the resources provided on the Web site by clicking on “How to Use This Site” on the left side of the home page.)

The [www.regulations.gov](http://www.regulations.gov) Web site allows users to provide comments by filling in a “Type Comments” field, or by attaching a document using an “Upload File” field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type “See attached” in the “Type Comments” field.

A person requesting that information contained in a comment that he/she submitted be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked “BUSINESS CONFIDENTIAL” at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to [www.regulations.gov](http://www.regulations.gov). The non-confidential summary will be placed in the docket and will be open to public inspection.

USTR may determine that information or advice contained in a comment submitted, other than business confidential information, is confidential in accordance with Section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

- (1) Must clearly so designate the information or advice;
- (2) Must clearly mark the material as “SUBMITTED IN CONFIDENCE” at the top and bottom of the cover page and each succeeding page; and
- (3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to [www.regulations.gov](http://www.regulations.gov). The non-confidential summary will be placed in the docket and will be open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding, docket number USTR–2013–0031, accessible to the public at [www.regulations.gov](http://www.regulations.gov). The public file will include non-confidential comments received by USTR from the public regarding the dispute. If a dispute settlement panel is convened, or in the event of an appeal from such a panel, the following documents will be made available to the public at [www.ustr.gov](http://www.ustr.gov): The United States' submissions, any non-confidential submissions received from other participants in the dispute, and any non-confidential summaries of submissions received from other participants in the dispute. In the event that a dispute settlement panel is convened, or in the event of an appeal from such a panel, the report of the panel, and, if applicable, the report of the Appellate Body, will also be available on the Web site of the World Trade Organization, at [www.wto.org](http://www.wto.org). Comments open to public inspection may be viewed at [www.regulations.gov](http://www.regulations.gov).

**Juan Millan,**

*Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. 2013–23030 Filed 9–20–13; 8:45 am]

**BILLING CODE 3290–F3–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Rule on Request To Release Airport Property at the Dallas/Fort Worth International Airport, DFW Airport, Texas

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of request to release for permanent easement of airport property

**SUMMARY:** The FAA proposes to rule and invite public comment on the release of land at the Dallas/Fort Worth International Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

**DATES:** Comments must be received on or before [Insert date 30 days of the posting of this **Federal Register** Notice].

**ADDRESSES:** Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jeff Fegan, Chief Executive Office, at the following address: Dallas/Fort Worth International Airport, Executive Office, P.O. Box 619428, DFW Airport, Texas 75261.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rodney Clark, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–651, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650, Telephone: (817) 222–5659, email: [Rodney.Clark@faa.gov](mailto:Rodney.Clark@faa.gov), fax: (817) 222–5989.

The request to release property may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA invites public comment on the request to release property at the Dallas/Fort Worth International Airport under the provisions of the AIR 21. On August 12, 2013, the FAA determined that the request for permanent easement at Dallas/Fort Worth International Airport, submitted by the Airport, met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than January 31, 2014.

The following is a brief overview of the request:

The Dallas/Fort Worth International Airport requests the release for permanent easement of 67.6175 acres of non-aeronautical airport property. The land was acquired by the Cities of Dallas and Fort Worth for use as an airport. The funds generated by the release will be used to develop, operate and maintain the Airport. Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Dallas/Fort Worth International Airport, telephone number (972) 973–5200.

Issued in Fort Worth, Texas on September 12, 2013.

**Kelvin L. Solco,**

*Manager, Airports Division.*

[FR Doc. 2013–23071 Filed 9–20–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Notice of Final Federal Agency Actions on Proposed Highway in Illinois

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

**SUMMARY:** This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, U.S. Route 45 from IL Route 132 to IL Route 173 in Lake County, Illinois. Those actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before February 20, 2014. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** Ms. Catherine A. Batey, Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4640, Email address: [Catherine.Batey@dot.gov](mailto:Catherine.Batey@dot.gov). The FHWA Illinois Division Office's normal business hours are 7:30 a.m. to 4:15 p.m. You may also contact Mr. John A. Fortmann, P.E., Illinois Department of Transportation, Deputy Director of Highways, Region One Engineer, 201 West Center Court, Schaumburg, Illinois 60196, Phone: (847) 705–4000. The Illinois Department of Transportation Region One's normal business hours are 8:00 a.m. to 4:15 p.m.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Illinois: reconstruct and widen U.S. Route 45 (FAP 0344) from IL Route 132 to IL Route 173, a distance of approximately

5.5 miles including a western bypass of U.S. Route 45 around the Millburn Historic District. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project approved on February 28, 2013 the Finding of No Significant Impact (FONSI) issued on September 9, 2013; and in other documents in the FHWA administrative record. The EA, FONSI, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Illinois Department of Transportation at the addresses provided above. The EA and FONSI and all other supporting documentation can be viewed and downloaded from the project Web site at [www.route45project.com](http://www.route45project.com).

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351] Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
2. Air: Clean Air Act [42 U.S.C. 7401–7671(q)].
3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303 and 23 U.S.C. 138].
4. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)].
5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act (AHPA) [16 U.S.C. 469–469(c)].
6. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Migratory Bird Treaty Act [16 U.S.C. 703–712].
7. Wetlands and Water Resources: Clean Water Act (Section 401 and 404) [33 U.S.C. 1251–1377]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287].
8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(l)(1).

Issued on: September 9, 2013.

**Catherine A. Batey,**

*Division Administrator, Springfield, Illinois.*

[FR Doc. 2013–22555 Filed 9–20–13; 8:45 am]

**BILLING CODE 4910-RY-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Notice of Final Federal Agency Actions on State Highway 288 in Texas

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

**SUMMARY:** This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, State Highway 288, from (US) 59 south of downtown Houston, Harris County to County Road (CR) 60 in Brazoria County, Texas. Those actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before February 20, 2014. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gregory Punske, P.E., District Engineer, District B (South), Federal Highway Administration, 300 East 8th Street, Room 826, Austin, Texas 78701; telephone: (512) 536–5960; email: [gregory.punske@fhwa.dot.gov](mailto:gregory.punske@fhwa.dot.gov). The FHWA Texas Division Office's normal business hours are 7:45 a.m. to 4:15 p.m. (central time) Monday through Friday. You may also contact Mr. Carlos Swonke, Environmental Affairs Division, Texas Department of Transportation, 118 E. Riverside Drive, Austin, Texas 78704; telephone: (512) 416–2734; email: [Carlos.Swonke@txdot.gov](mailto:Carlos.Swonke@txdot.gov). The Texas Department of Transportation normal business hours are 8 a.m. to 5 p.m. (central time) Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Texas: State

Highway (SH) 288 from (US) 59 south of downtown Houston, Harris County to County Road (CR) 60 in Brazoria County. The project will be a 41.8 km (26 mi) long. It will begin at US 59 in Harris County and then proceed south through Brazoria County and end at CR 60. The proposed improvements will be constructed in phases. The interim phase (Phase 1) of the project will involve the construction of two toll lanes from US 59 to State Highway (SH) 6 and direct connector (DC) improvements at Beltway (BW) 8, new overpasses at selected, existing at-grade intersections (part of the toll facility) and some ramp and frontage road improvements. The ultimate project (Phase 2) will add two additional toll lanes from US 59 to SH 6, providing a total of four toll lanes (two in each direction); add one additional general-purpose lane in each direction from Interstate Highway (IH) 610 to BW 8, resulting in a total of four general-purpose lanes in each direction; and will extend four toll lanes from SH 6 southward to CR 60. Direct-connector improvements at IH 610 and BW 8, and new overpasses at selected, existing at-grade intersections (part of the toll facility) will be constructed during the ultimate phase of the project. If funding becomes available, the ultimate (Phase 2) configuration will be constructed along with the interim (Phase 1). The purpose of the project is to alleviate congestion along the SH 288 corridor from US 59 to CR 60 and to improve access to the Texas Medical Center.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project, approved for further processing on January 23, 2013, in the FHWA Finding of No Significant Impact (FONSI) issued on May 23, 2013, and in other documents in the FHWA project files. The EA, FONSI, and other documents in the FHWA project file are available by contacting the FHWA or the Texas Department of Transportation at the addresses provided above. The FHWA EA and FONSI can be viewed and downloaded from the following Web site: <http://www.txdot.gov/inside-txdot/projects/studies/houston/sh288.html>.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4335]; Federal-Aid Highway Act [23 U.S.C. 109].

2. Air: Clean Air Act, 42 U.S.C. 7401–7671(q).

3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Uniform Relocation and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601–4655].

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544] Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. Wetlands and Water Resources: Clean Water Act, 33 U.S.C. 1251–1387; Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604.

8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 13112 on Invasive Species, E.O. 12898 on Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13166 Improving Access to Services for Persons with Limited English Proficiency (LEP).

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(l)(1).

Issued on: September 9, 2013.

**Gregory S. Punske,**  
*District Engineer.*

[FR Doc. 2013–22548 Filed 9–20–13; 8:45 am]

**BILLING CODE 4910-RY-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Notice of Final Federal Agency Actions on the Proposed U.S. 50 Study Crossing Over Sinepauvent Bay in the Town of Ocean City, Worcester County, Maryland

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

**SUMMARY:** This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The action relates to the U.S. 50 Crossing over Sinepauvent Bay Study from MD 611 to MD 378 and 5th Street to Somerset Street located in the Town of Ocean City, Worcester County, Maryland. This action grants approval for the project.

**DATES:** By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before February 20, 2013. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

#### FOR FURTHER INFORMATION CONTACT:

Gregory Murrill, Division Administrator, Federal Highway Administration, 10 South Howard Street, Suite 2450, Baltimore, MD 21201, Telephone (410) 962–4440; or Bruce Grey, Deputy Director, Maryland State Highway Administration, 707 North Calvert Street, Mail Stop C–301, Baltimore, MD 21202, Telephone (410) 545–8500.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Maryland for the U.S. 50 Crossing over Sinepauvent Bay Study from MD 611 to MD 378 and 5th Street to Somerset Street in Ocean City, MD. The FHWA approves the Selection of Alternative 5A—North Parallel Bridge, as described in the Final Environmental Impact Statement (FEIS) dated May 2012 and documents that the Selected Alternative best serves the purpose and need for this project, minimizes environmental impacts, and is in the best overall public interest, in accordance with 23 U.S.C. 109. This ROD is based on the information presented in the FEIS and its associated administrative record and consideration of input received from the public and other agencies. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the FEIS for the project, approved on May 24, 2012, in the ROD issued on August 22, 2013, and in other documents in the FHWA administrative record. The FEIS, ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Maryland State

Highway Administration at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site at [www.marylandroads.com/home.aspx](http://www.marylandroads.com/home.aspx) or viewed at public libraries in the project area.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. Air: Clean Air Act, [42 U.S.C. 7401–7671(q)].

3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Section 6(f) of the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 460]; Farmland Protection Policy Act [7 U.S.C. 4201–4209].

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 et seq.]; Bald and Golden Eagle Protection Act of 1940 [16 U.S.C. 668–668c].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.].

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)].

7. Executive Orders; E.O. 11990 Protection of Wetlands; E.O. 11988 Protection of Floodplains; E.O. 12898 Federal Actions to Address Environmental Justice in Minority and Low Income Populations; E.O. 13175 Consultation and Coordination with Indian Tribal Governments.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(l)(1), as amended by Moving Ahead for Progress in the 21st Century Act (MAP–21), Pub. L. No. 112–141, sec. 1308, 126 Stat. 405 (2012).

Issued on: September 9, 2013.

**Gregory Murrill,**

*Division Administrator, Baltimore, MD.*

[FR Doc. 2013–22541 Filed 9–20–13; 8:45 am]

**BILLING CODE 4910-RY-P**

**DEPARTMENT OF TRANSPORTATION****Surface Transportation Board****[Docket No. EP 670 (Sub-No. 3)]****Renewal of Rail Energy Transportation Advisory Committee****AGENCY:** Surface Transportation Board, DOT.**ACTION:** Notice of intent to renew charter.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, as amended, 5 U.S.C. app. 2 (FACA), notice is hereby given that the Surface Transportation Board (Board) intends to renew the charter of the Rail Energy Transportation Advisory Committee (RETAC).

**ADDRESSES:** A copy of the charter is available at the Library of the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001, and on the Board's Web site at <http://www.stb.dot.gov/stb/rail/retac.html>.

**FOR FURTHER INFORMATION CONTACT:** Michael Higgins, Designated Federal Officer, at (202) 245-0284. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877-8339].

**SUPPLEMENTARY INFORMATION:** RETAC was established by the Board on September 24, 2007, to provide advice and guidance to the Board, on a continuing basis, and to provide a forum for the discussion of emerging issues and concerns regarding the transportation by rail of energy resources, including, but not necessarily limited to, coal and biofuels (such as ethanol), and petroleum. RETAC functions solely as an advisory body and complies with the provisions of FACA and its implementing regulations.

RETAC consists of up to 25 voting members, excluding the governmental representatives. The membership comprises a balanced representation of individuals experienced in issues affecting the transportation of energy resources, including not less than: 5 Representatives from the Class I railroads; 3 representatives from Class II and III railroads; 3 representatives from coal producers; 5 representatives from electric utilities (including at least one rural electric cooperative and one state- or municipally-owned utility); 4 representatives from biofuel feedstock growers or providers, and biofuel refiners, processors, and distributors; 2 representatives from private car owners, car lessors, or car manufacturers; and, 1 representative from the petroleum shipping industry. The Committee may

also include up to 2 members with relevant experience but not necessarily affiliated with one of the aforementioned industries or sectors. All voting members of the Committee serve in a representative capacity on behalf of their respective industry or stakeholder group. STB Board Members are *ex officio* (non-voting) members of RETAC. Representatives from the U.S. Departments of Agriculture, Energy, and Transportation and the Federal Energy Regulatory Commission may be invited to serve on the Committee in an advisory capacity as *ex officio* (non-voting) members.

RETAC meets at least twice a year, and meetings are open to the public, consistent with the Government in the Sunshine Act, P. L. 94-409.

Further information about RETAC is available on the Board's Web site and at the GSA's FACA Database—<http://facasms.fido.gov/>.

Decided: September 17, 2013.

By the Board,

**Rachel D. Campbell,***Director, Office of Proceedings.***Derrick A. Gardner,***Clearance Clerk.*

[FR Doc. 2013-23066 Filed 9-20-13; 8:45 am]

**BILLING CODE 4915-01-P****DEPARTMENT OF TRANSPORTATION****Surface Transportation Board****[Docket No. EP 519 (Sub-No. 5)]****Renewal of National Grain Car Council****AGENCY:** Surface Transportation Board, DOT.**ACTION:** Notice of intent to renew charter.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, as amended 5 U.S.C., app. 2 (FACA), notice is hereby given that the Surface Transportation Board intends to renew the charter of the National Grain Car Council (NGCC).

**ADDRESSES:** A copy of the charter is available at the Library of the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001, and on the Board's Web site at "[http://www.stb.dot.gov/stb/rail/graincar\\_council.html](http://www.stb.dot.gov/stb/rail/graincar_council.html)".

**FOR FURTHER INFORMATION CONTACT:** Fred Forstall, Designated Federal Officer, at (202) 245-0241. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877-8339].

**SUPPLEMENTARY INFORMATION:** The NGCC functions as a continuing working group

to facilitate private-sector solutions and recommendations to the STB on matters affecting grain transportation. The NGCC functions solely as an advisory body, and complies with the provisions of FACA.

The NGCC consists of approximately 40 members, excluding the governmental representatives. Members comprise a balanced representation of executives knowledgeable in the transportation of grain, including not less than 14 members from the Class I railroads (one marketing and one car management representative from each Class I), 7 representatives from Class II and III carriers, 14 representatives from grain shippers and receivers, and 5 representatives from private car owners and car manufacturers. The Chairman and Vice Chairman of the Board are *ex officio* (non-voting) members of the NGCC.

The NGCC meets at least annually, and meetings are open to the public, consistent with the Government in the Sunshine Act, P. L. 94-409.

Further information about the NGCC is available on the Board's Web site and at the GSA's FACA Database—<http://facasms.fido.gov/>.

Decided: September 17, 2013.

By the Board, Rachel D. Campbell,  
*Director, Office of Proceedings.***Raina S. White,***Clearance Clerk.*

[FR Doc. 2013-23056 Filed 9-20-13; 8:45 am]

**BILLING CODE 4915-01-P****DEPARTMENT OF THE TREASURY****United States Mint****Senior Executive Service; Combined Performance Review Board (PRB)****AGENCY:** United States Mint (USM), Treasury.**ACTION:** Notice of members of Combined Performance Review Board.

**SUMMARY:** This notice announces the appointment of the members of the Combined Performance Review Board (PRB) for the United States Mint (USM), the Fiscal Service (FS), the Financial Crimes Enforcement Network (FinCEN), the Bureau of Engraving and Printing (BEP), and the Alcohol and Tobacco Tax and Trade Bureau (TTB). The Combined PRB reviews the performance appraisals of career senior executives below the level of the bureau head who are not assigned to the immediate Office of the Director of each bureau represented by the Combined PRB. The Combined PRB makes recommendations regarding proposed performance appraisals,

ratings, bonuses, pay adjustments, and other appropriate personnel actions. Membership is effective on September 30, 2013.

Composition of the USM PRB, including names and titles, is as follows:

**Primary Members**

Beverly Ortega Babers, Chief  
Administrative Officer, USM

Anita Shandor, Deputy Commissioner,  
Office of Finance and Administration,  
FS

Peter S. Alvarado, Associate Director,  
Management Programs Division,  
FinCEN

Leonard R. Olijar, Deputy Director, BEP  
Mary G. Ryan, Deputy Administrator,  
TTB

**Alternate Members**

Richard A. Peterson, Deputy Director,  
USM

Wanda Rogers, Deputy Commissioner,  
Financial Services and Operations, FS  
Amy Taylor, Associate Director,  
Technology Solutions and Services  
Division, FinCEN

Will P. Levy III, Associate Director,  
Management, BEP

Cheri Mitchell, Assistant Administrator  
(Management)/Chief Financial  
Officer, TTB

**FOR FURTHER INFORMATION CONTACT:**

Annie Brown, Associate Director,  
Workforce Solutions Department; 801  
9th Street NW., Washington, DC 20220;  
or call 202-354-7343.

**Authority:** 5 U.S.C. 4314(c)(4).

Dated: September 17, 2013.

**Richard A. Peterson,**

*Deputy Director, United States Mint.*

[FR Doc. 2013-23024 Filed 9-20-13; 8:45 am]

**BILLING CODE P**



# FEDERAL REGISTER

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## Part II

### Department of Health and Human Services

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Centers for Medicare & Medicaid Services

42 CFR Parts 405, 491, and 493

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Medicare Program; Prospective Payment System for Federally Qualified Health Centers; Changes to Contracting Policies for Rural Health Clinics; and Changes to Clinical Laboratory Improvement Amendments of 1988 Enforcement Actions for Proficiency Testing Referral; Proposed Rule

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 405, 491, and 493

[CMS-1443-P]

RIN 0938-AR62

#### Medicare Program; Prospective Payment System for Federally Qualified Health Centers; Changes to Contracting Policies for Rural Health Clinics; and Changes to Clinical Laboratory Improvement Amendments of 1988 Enforcement Actions for Proficiency Testing Referral

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish methodology and payment rates for a prospective payment system (PPS) for federally qualified health center (FQHC) services under Medicare Part B beginning on October 1, 2014, in compliance with the statutory requirement of the Affordable Care Act. This proposed rule would also establish a policy which would allow rural health clinics (RHCs) to contract with nonphysician practitioners when statutory requirements for employment of nurse practitioners and physician assistants are met, and make other technical and conforming changes to the RHC and FQHC regulations. Finally, this proposed rule would make changes to the Clinical Laboratory Improvement Amendments (CLIA) regulations regarding enforcement actions for proficiency testing referral.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 18, 2013.

**ADDRESSES:** In commenting, please refer to file code CMS-1443-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1443-P, P.O. Box 8013, Baltimore, MD 21244-1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1443-P, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786-7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Corinne Axelrod, (410) 786-5620 for FQHCs and RHCs.

Melissa Singer, (410) 786-0365 for CLIA Enforcement Actions for Proficiency Testing Referral.

#### **SUPPLEMENTARY INFORMATION:**

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have

been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

#### **Acronyms**

AIR All-Inclusive Rate  
APM Alternative Payment Methodology  
CCN CMS Certification Number  
CCR Cost-To-Charge Ratio  
CFR Code of Federal Regulations  
CLIA Clinical Laboratory Improvement Amendments of 1988  
CMP Civil Money Penalty  
CMS Centers for Medicare & Medicaid Services  
CNM Certified Nurse Midwife  
CP Clinical Psychologist  
CSW Clinical Social Worker  
CY Calendar Year  
DSMT Diabetes Self-Management Training  
E/M Evaluation and Management  
FQHC Federally Qualified Health Center  
FSHCAA Federally Supported Health Centers Assistance Act  
GAF Geographic Adjustment Factor  
GAO Government Accountability Office  
GPCI Geographic Practice Cost Index  
HCPCS Healthcare Common Procedure Coding System  
HCRIS Healthcare Cost Report Information System  
HBV Hepatitis B Vaccines  
HRSA Health Resources and Services Administration  
IDR Integrated Data Repository  
IPPE Initial Preventive Physical Exam  
MA Medicare Advantage  
MAC Medicare Administrative Contractor  
MCO Managed Care Organization  
MEI Medicare Economic Index  
MIPPA Medicare Improvements for Patients and Providers Act  
MNT Medical Nutrition Therapy  
MUA Medically Underserved Area  
MUP Medically Underserved Population  
NP Nurse Practitioner  
OBRA Omnibus Budget Reconciliation Act  
PA Physician Assistant  
PHS Public Health Service  
PFS Physician Fee Schedule  
PPS Prospective Payment System  
PT Proficiency testing  
ResDAC Research Data Assistance Center  
RIA Regulatory Impact Analysis  
RHC Rural Health Clinic  
SNF Skilled Nursing Facility  
UDS Uniform Data System  
USPSTF U.S. Preventive Services Task Force  
UPL Upper Payment Limit

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**I. Executive Summary and Background****A. Executive Summary****1. Purpose and Legal Authority**

The Affordable Care Act (Pub. L. 111–148) added section 1834(o) of the Social Security Act (the Act) to establish a new system of payment for the costs of federally qualified health center (FQHC) services under Medicare Part B (Supplemental Medical Insurance) based on prospectively set rates. According to section 1834(o)(2)(A) of the Act, the FQHC prospective payment system (PPS) is to be effective beginning on October 1, 2014. The primary purpose of this rule is to propose a methodology and payment rates for the new FQHC PPS.

This rule also proposes to allow RHCs to contract with non-physician practitioners, consistent with statutory requirements that require at least one nurse practitioner (NP) or physician assistant (PA) be employed by the RHC.

The “Taking Essential Steps for Testing Act of 2012” (TEST Act) (Pub. L. 112–202) was enacted on December 4, 2012. The TEST Act amended section 353 of the Public Health Service Act (PHS Act) to provide the Secretary with discretion as to which sanctions may be applied to cases of intentional PT referral. The purpose of this proposal is to amend the CLIA regulations to be in alignment with the statutory change and to propose the regulatory changes needed to fully implement the TEST Act.

**2. Summary of the Major Provisions****a. Basis for Payment Under the FQHC PPS**

Under the PPS, we are proposing to establish a national, encounter-based

rate for all FQHCs and pay FQHCs a single encounter-based rate for professional services furnished per beneficiary per day. The encounter-based rate would be calculated based on an average cost per visit (that is, total FQHC cost divided by total FQHC encounters) using Medicare cost report and claims data. We believe an encounter-based payment rate for the FQHC PPS will both provide appropriate payment while remaining administratively simple. An encounter-based payment rate is consistent with our commitment to greater bundling of services, and gives FQHCs the flexibility to implement efficiencies to reduce over-utilization of services. FQHCs are accustomed to billing for a single encounter and being paid through an all-inclusive rate (AIR). An encounter-based payment is also similar to Medicaid payment systems, and Medicaid is the predominant payer for FQHCs.

We are also proposing a few simple adjustments to the encounter-based payment rate. We are proposing to adjust the encounter-based rate for geographic differences in the cost of inputs by applying an adaptation of the geographic practice cost indices (GPCI) used to adjust payment under the Physician Fee Schedule (PFS). Also, we are proposing to adjust the encounter-based rate when a FQHC furnishes care to a patient that is new to the FQHC or to a beneficiary receiving a comprehensive initial Medicare visit (that is, an initial preventive physical examination (IPPE) or an initial annual wellness visit (AWV)). We believe this adjustment would account for the greater intensity and resource use associated with these types of services. For additional information on the design of the FQHC PPS and risk adjustment, see section II. of this proposed rule.

**b. Addressing Payment for Multiple Visits on the Same Day**

Under the current reasonable cost based payment methodology, FQHCs are paid an AIR for all services furnished on the same day to the same beneficiary, with the following exceptions: (1) The FQHC can bill for an additional visit on the same day when an illness or injury occurs subsequent to the initial visit; and (2) the FQHC can bill for additional visits when mental health, diabetes self-management/medical nutrition therapy (DSMT/MNT), or the IPPE are furnished on the same day as the medical visit. However, there are no statutory requirements that we pay separately for these services, and an analysis of FQHC claims data submitted in 2011 and 2012

indicates that less than 0.5 percent of all billed visits were for more than 1 visit per day for the same beneficiary.

We understand that there may be many possible reasons why the rate of billing for more than one visit per day has been low, and that there are many ways that FQHCs are providing integrated, patient-centered health care services. Since the option to bill for more than one visit per day is rarely utilized by FQHCs and continuation of the exception to the single, all-inclusive payment per day requires additional complexity to the PPS, we are proposing to eliminate these exceptions for payment for multiple visits on the same day and limit FQHCs to 1 encounter payment per day. We believe this approach is consistent with an all-inclusive methodology and reasonable cost principles, and would not significantly impact FQHC reimbursement. However, we are interested in comments that address whether there are factors that we have not considered, particularly in regards to mental health services, and we would reconsider this approach if information is presented that this may impact on beneficiaries' access to services or the integration of services in underserved communities. For additional information on billing for multiple visits on the same day, see section B of this proposed rule.

#### c. Beneficiary Coinsurance

Under the current reasonable cost system, beneficiary coinsurance for FQHC services is assessed based on the FQHC's charge, which can result in the coinsurance amount being higher than what it would be if it was based on the AIR, which is derived from costs. Section 1833(a)(1)(Z) of the Act requires that Medicare payment under the FQHC PPS shall be 80 percent of the lesser of the actual charge or the PPS rate, and we are proposing that coinsurance would be 20 percent of the lesser of the actual charge or the PPS rate. While the statute makes no specific provision to revise the methodology for determining coinsurance amounts under the new PPS, we believe that this is consistent with statutory language in sections 1866(a)(2)(A) and 1833(a)(3)(A) of the Act and elsewhere that addresses coinsurance amounts and Medicare cost principles.

#### d. Waiving Coinsurance for Preventive Services

Effective January 1, 2011, Medicare waives beneficiary coinsurance for eligible preventive services furnished by a FQHC. Medicare requires detailed Healthcare Common Procedure Coding

System (HCPCS) coding on FQHC claims to ensure that coinsurance is not applied to the line item charges for these preventive services.

For FQHC claims that include a mix of preventive and non-preventive services, we are proposing to use physician office payments under the Medicare PFS to determine the proportional amount of coinsurance that should be waived for payments based on the PPS encounter rate, and we would continue to use provider-reported charges to determine the amount of coinsurance that should be waived for payments based on the provider's charge. Total payment to the FQHC, including both Medicare and beneficiary liability, would not exceed the provider's charge or the PPS rate.

#### e. Transition Period and Annual Adjustment

The statute requires implementation of the FQHC PPS for FQHCs with cost reporting periods beginning on or after October 1, 2014. FQHCs would transition into the PPS based on their cost reporting periods. The claims processing system would maintain the current system and the PPS until all FQHCs have transitioned to the PPS. We are proposing to transition the PPS to a calendar year update for all FQHCs, beginning January 1, 2016, to be consistent with many of the PFS files that are updated on a calendar year basis. The statute also requires us to adjust the FQHC PPS by the MEI in the first year after implementation, and either the MEI or a FQHC market basket in subsequent years.

#### f. Other FQHC/RHC Provisions

In addition to proposing to codify the statutory requirements for the FQHC PPS in this proposed rule, we are proposing to allow RHCs to contract with non-physician practitioners, consistent with statutory requirements that require at least one nurse practitioner (NP) or physician assistant (PA) be employed by the RHC. The ability to contract with NPs, PAs, certified nurse midwives (CNMs), clinical psychologists (CPs), and clinical social workers (CSWs) would provide RHCs with additional flexibility with respect to recruiting and retaining non-physician practitioners.

We are also proposing edits to correct terminology, clarify policy, delete irrelevant code, and make other conforming changes for existing mandates and the new PPS.

#### g. CLIA Enforcement Actions for Proficiency Testing Referral

The "Taking Essential Steps for Testing Act of 2012" (Pub. L. 112–202) amended section 353 of the Public Health Service Act to provide the Secretary with discretion as to which sanctions may be applied to cases of intentional PT referral in lieu of the automatic revocation of the CLIA certificate and the subsequent ban preventing the owner and operator from owning or operating a CLIA certified laboratory for 2 years. Based on this discretion, we would amend the CLIA regulations by adding three categories of sanctions for PT referral based on the severity and extent of the violation.

#### 3. Summary of Cost and Benefits

##### a. For the FQHC PPS

As required by section 1834(o)(2)(B)(i) of the Act, initial payments (Medicare and coinsurance) under the FQHC PPS must equal 100 percent of the estimated amount of reasonable costs, as determined without the application of the current system's UPL or productivity standards that can reduce a FQHC's per visit rate. The proposed FQHC PPS is estimated to have an overall impact of increasing total Medicare payments to FQHCs by approximately 30 percent. The annualized cost to the federal government associated with the proposed FQHC PPS is estimated to be between \$183 million and \$186 million, based on 5 year discounted flows using 3 percent and 7 percent factors.

##### b. For Other FQHC and RHC Changes

The ability to contract with NPs, PAs, CNMs, CP, and CSWs would provide RHCs with additional flexibility with respect to recruiting and retaining non-physician practitioners, which may result in increasing access to care in rural areas. There is no cost to the Federal government and we are unable to estimate a cost savings for RHCs. In addition, we believe that there are no costs associated with the technical and conforming regulatory changes that would be made in conjunction with the establishment of the FQHC PPS.

##### c. CLIA Enforcement Actions for Proficiency Testing Referral Changes

Over a 4-year span, we estimate that an average of 6 cases per year may have fit the terms of described in this proposed rule to have alternative sanctions applied. We believe that the largest single type of cost is the expense to the laboratory or hospital to contract out for management of the laboratory, and to pay laboratory director fees, due

to the 2-year ban that prohibits the owner and operator from owning or operating a CLIA-certified laboratory in accordance with revocation of the CLIA certificate. Estimating the expense of alternative sanctions at \$150,000 per laboratory, the annual fiscal savings of the proposed changes for affected laboratories would be approximately \$2.6 million (\$578,400—\$150,000 for 6 laboratories). We note that there are a number of factors (known and unknown) that could impact this estimate. We also note that the total savings may not be large, but the savings to the individual laboratory or hospital that would be affected may be significant. However, we note that the \$2.6 million estimated savings to laboratories may overstate or understate the provision's net benefits. While we recognize that there are several potential inaccuracies in our estimates, we lack data to account for these considerations.

## B. Overview and Background

### 1. FQHC Description and General Information

FQHCs are facilities that provide services that are typically furnished in an outpatient clinic setting. They are currently paid an AIR per visit for qualified primary and preventive health services furnished to Medicare beneficiaries.

The statutory requirements that FQHCs must meet to qualify for the Medicare benefit are in section 1861(aa)(4) of the Act. Based on these provisions, the following three types of organizations that are eligible to enroll in Medicare as FQHCs:

- Health Center Program grantees: Organizations receiving grants under section 330 of the PHS Act (42 U.S.C. 254b).
- Health Center Program “look-alikes”: Organizations that have been identified by the Health Resources and Services Administration (HRSA) as meeting the requirements to receive a grant under section 330 of the PHS Act, but which do not receive section 330 grant funding.
- Outpatient health programs/facilities operated by a tribe or tribal organization (under the Indian Self-Determination Act) or by an urban Indian organization (under Title V of the Indian Health Care Improvement Act).

Section 330 Health Centers are the predominant type of FQHC. Originally known as Neighborhood Health Centers, they have evolved over the last 45 years to become an integral component of the Nation's health care safety net system, with more than 1,100 centers operating approximately 8,900 delivery sites that

serve more than 21 million people each year from medically underserved communities. They include community health centers (section 330(e) of the PHS Act), migrant health centers (section 330(g) of the PHS Act), health care for the homeless (section 330(h) of the PHS Act), and public housing primary care (section 330(i) of the PHS Act).

FQHCs may be either not-for-profit or public organizations. The main purpose of the FQHC program is to enhance the provision of primary care services in underserved urban, rural and tribal communities. FQHCs that are not operated by a tribe or tribal organization are required to be located in or treat people from a Federally-designated medically underserved area (MUA) or medically underserved population (MUP) and to comply with all the requirements of section 330 of the PHS Act. Some of these section 330 requirements include offering a sliding fee scale to persons with incomes below 200 percent of the federal poverty level, and being governed by a board of directors of whom a majority of the members receive their care at the FQHC. According to HRSA's Uniform Data System (UDS),<sup>1</sup> approximately 8 percent of FQHC patients were Medicare beneficiaries, 41 percent were Medicaid recipients, and 36 percent were uninsured in 2012. The remainder was privately insured or had other public insurance. Medicare and Medicaid accounted for approximately 9 percent and 47 percent of their total billing, respectively.

Congress has authorized several programs to assist FQHCs in increasing access to care for underserved and special populations. Many FQHCs receive section 330 grant funds to offset the costs of uncompensated care and provide other services. All FQHCs are eligible to participate in the 340B Drug Pricing Program for pharmaceutical products. FQHCs that receive section 330 grant funds also are eligible to apply for medical malpractice coverage under Federally Supported Health Centers Assistance Act (FSHCAA) of 1992 (Pub. L. 102–501) and FSHCAA of 1995 (Pub. L. 104–73 amending section 224 of the PHS Act) and may be eligible for Federal loan guarantees for capital improvements when funds for this purpose are appropriated. Title VIII of the American Recovery and Reinvestment Act (Pub. L. 111–5) appropriated \$2 billion for construction, equipment, health information

<sup>1</sup> The UDS collects and tracks data such as patient demographics, services provided, staffing, clinical indicators, utilization rates, costs, and revenues from section 330 health centers and health center look-alikes.

technology, and related improvements to existing section 330 grantees and for the establishment of new grantees sites. The Affordable Care Act appropriated an additional \$11 billion over a 5-year period (\$1.5 billion for capital improvements and \$9.5 billion for support and expansion of the 330 health centers). HRSA administers the 330 grant program and other programs that assist FQHCs in increasing access to primary and preventive health care in underserved communities.

### 2. Medicare's FQHC Coverage and Payment Benefit

The FQHC coverage and payment benefit under Medicare was added effective October 1, 1991, when section 1861(aa) of the Act was amended by section 4161 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 (Pub. L. 101–508, enacted on November 5, 1990) and implemented in regulations via the June 12, 1992 final rule with comment period (57 FR 24961) and the April 3, 1996 final rule (61 FR 14640). Regulations pertaining to FQHCs are found primarily in 42 CFR Part 405, and 42 CFR Part 491.

FQHC covered services and supplies include the following:

- Physician, NP, PA, CNM, CP, and CSW services.
- Services and supplies furnished incident to a physician, NP, PA, CNM, CP, or CSW services.
- FQHC covered drugs that are furnished by, a FQHC practitioner.
- Outpatient diabetes self-management training (DSMT) and medical nutrition therapy (MNT) for beneficiaries with diabetes or renal disease.
- Statutorily-authorized preventive services.
- Visiting nurse services to the homebound in an area where CMS has determined that there is a shortage of home health agencies.

### 3. Legislation Pertaining to Medicare and Medicaid Payments for FQHC Services

FQHCs currently receive cost-based reimbursement, subject to an upper payment limit (UPL) and productivity standards, for services furnished to Medicare beneficiaries, and PPS payment, based on their historical cost data, for services furnished to Medicaid recipients (section 1902(bb) of the Act). The UPL for Medicare FQHC services is adjusted annually based on the Medicare Economic Index (MEI), as described in 1842(i)(3) of the Act. Authority to apply productivity standards is found in 1833(a) and 1861(v)(1)(A) of the Act. Section 151(a)

of the Medicare Improvements for Patients and Providers Act (MIPPA) of 2008 (Pub. L. 110–275, enacted on July 15, 2008) increased the UPL for FQHC by \$5, effective January 1, 2010. Section 151(b) of the MIPPA required the Government Accountability Office (GAO) to study and report on the effects and adequacy of the Medicare FQHC payment structure.

Based on a GAO analysis of 2007 Medicare cost report data, about 72 percent of FQHCs had average costs per visit that exceeded the UPL, and the application of productivity standards reduced Medicare payment for approximately 7 percent of FQHCs. In 2007, application of the limits and adjustments currently in place reduced FQHCs' submitted costs of services by approximately \$73 million, about 14 percent (Medicare Payments to Federal Qualified Health Centers, GAO–10–576R, July 30, 2010).

The Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554, enacted December 21, 2000) created section 1902(bb) of the Act which established a PPS for Medicaid reimbursement. The law allowed state Medicaid agencies to establish their own reimbursement methodology for FQHCs provided that total reimbursement would not be less than the payment under the Medicaid PPS, and that the FQHC agreed to the alternative payment methodology (APM). For beneficiaries enrolled in a managed care organization (MCO), the MCO pays the FQHC an agreed upon amount, and the state Medicaid program pays the FQHC a wraparound payment equal to the difference, if any, between the PPS rate and the payment from the managed care organization.

The Affordable Care Act established a Medicare PPS for FQHCs. Section 10501(i)(3)(A) of the Affordable Care Act added section 1834(o) of the Act, requiring the Medicare FQHC PPS to be implemented starting October 1, 2014. The new PPS for FQHCs is required to take into account the type, intensity, and duration of services furnished by FQHCs and may include adjustments, including geographic adjustments, determined appropriate by the Secretary. A detailed discussion of the statutory requirements for the Medicare FQHC PPS is discussed in section I.B. of this proposed rule.

#### 4. Medicare's Current Reasonable Cost-Based Reimbursement Methodology

FQHCs are paid an AIR per visit for medically-necessary professional services that are furnished face-to-face (one practitioner and one patient) with a FQHC practitioner (42 CFR 405.2463).

Services and supplies furnished incident to a FQHC professional service are included in the AIR and are not billed as a separate visit. Technical components such as x-rays, laboratory tests, and durable medical equipment are not part of the AIR and are billed separately to Medicare Part B.

The AIR is calculated by dividing total allowable costs by the total number of visits. Allowable costs may include practitioner compensation, overhead, equipment, space, supplies, personnel, and other costs incident to the delivery of FQHC services. Cost reports are filed in order to identify all incurred costs applicable to furnishing covered FQHC services. Freestanding FQHCs complete Form CMS–222–92, “Independent Rural Health Clinic and Freestanding Federally Qualified Health Center Cost Report”. FQHCs based in a hospital complete the Worksheet M series of Form CMS–2552–10, “Hospital and Hospital Care Complex Cost Report”. FQHCs based in a skilled nursing facility (SNF) complete the Worksheet I series of Form CMS–2540–10, “Skilled Nursing Facility and Skilled Nursing Facility Health Care Complex Cost Report”. FQHCs based in a home health agency complete the Worksheet RF series of Form CMS–1728–94, “Home Health Agency Cost Report”. Information on these cost report forms is found in Chapters 29, 40, 41 and 32, respectively, of the “Provider Reimbursement Manual—Part 2” (Publication 15–2). Per 42 CFR 413.65(n), only FQHCs that were operating as provider-based clinics prior to 1995 and either received funds under section 330 of the PHS Act or were determined by CMS to meet the criteria to be a look-alike clinic are eligible to be certified as provider-based FQHCs. FQHCs that do not already have provider-based status are no longer permitted to receive the designation.

At the beginning of a FQHC's fiscal year, the Medicare Administrative Contractor (MAC) calculates an interim AIR based on actual costs and visits from the previous cost reporting period. For new FQHCs, the interim AIR is estimated based on a percentage of the per-visit limit. FQHCs receive payments throughout the year based on their interim rate. After the conclusion of the fiscal year, the cost report is reconciled and any necessary adjustments in payments are made.

Allowable costs are subject to tests of reasonableness, productivity standards, and an overall payment limit (42 CFR 405.2464, 405.2466, and 405.2468). The productivity standards require 4,200 visits per full-time equivalent physician and 2,100 visits per full-time equivalent

non-physician practitioner (NP, PA or CNM) on an annual basis. If the FQHC has furnished fewer visits than required by the productivity standards, the allowable costs would be divided by the productivity standards numbers instead of the actual number of visits.

The payment limit varies based on whether the FQHC is located in an urban or rural area (as defined in section 1886(d)(2)(D) of the Act). The 2013 payment limits per visit for urban and rural FQHCs are \$128.00 and \$110.78, respectively. FQHCs with multiple sites may elect to file a consolidated cost report (CMS Pub. 100–04, Medicare Claims Processing Manual, chapter 9, § 30.8), and if the FQHC has both urban and rural sites, the MAC applies a weighted UPL based on the percentage of urban and rural visits as the percentage of total site visits. The AIR is equal to the FQHC's cost per visit (adjusted by the productivity standard if appropriate) or the payment limit, whichever is less.

Medicare beneficiaries receiving services at a FQHC are not subject to the annual Medicare deductible for FQHC-covered services (section 1833(b) of the Act). Medicare beneficiaries pay a copayment based on 20 percent of the charges (section 1866(a)(2)(A)(ii) of the Act), except for: (1) Mental health treatment services, which are subject to the outpatient mental health treatment limitation until January 1, 2014, when beneficiary coinsurance is reduced to the same level as most other Part B services; (2) FQHC-supplied influenza and pneumococcal and Hepatitis B vaccines (HBV); and (3) effective January 1, 2011, personalized prevention plan services and any Medicare covered preventive service that is recommended with a grade of A or B by the U.S. Preventive Services Task Force (USPSTF).

The administration and payment of influenza and pneumococcal vaccines is not included in the AIR. They are paid at 100 percent of reasonable costs through the cost report. The cost and administration of Hepatitis B vaccine (HBV) is covered under the FQHC's AIR.

#### 5. Summary of Requirements Under the Affordable Care Act for the FQHC PPS and Other Provisions Pertaining to FQHCs

Section 10501(i)(3)(A) of the Affordable Care Act amended section 1834 of the Act by adding a new subsection (o), “Development and Implementation of Prospective Payment System”. Section 1834(o)(1)(A) of the Act requires that the system include a process for appropriately describing the services furnished by FQHCs. Also, the

system must establish payment rates based on such descriptions of services, taking into account the type, intensity, and duration of services furnished by FQHCs. The system may include adjustments (such as geographic adjustments) as determined appropriate by the Secretary of HHS.

Section 1834(o)(1)(B) of the Act specifies that, by no later than January 1, 2011, FQHCs must begin submitting information as required by the Secretary, including the reporting of services using HCPCS codes, in order to develop and implement the PPS.

Section 1834(o)(2)(A) of the Act requires that the FQHC PPS must be effective for cost reporting periods beginning on or after October 1, 2014. For such cost reporting periods, reasonable costs will no longer be the basis for Medicare payment for services furnished to beneficiaries at FQHCs.

Section 1834(o)(2)(B)(i) of the Act requires that the initial PPS rates must be set so as to equal in the aggregate 100 percent of the estimated amount of reasonable costs that would have occurred for the year if the PPS had not been implemented. This 100 percent must be calculated prior to application of copayments, per visit limits, or productivity adjustments.

Section 1834(o)(2)(B)(ii) of the Act describes the methods for determining payments in subsequent years. After the first year of implementation, the PPS payment rates must be increased by the percentage increase in the MEI. After the second year of implementation, PPS rates shall be increased by the percentage increase in a market basket of FQHC goods and services as established through regulations, or, if not available, the MEI that is published in the Physician Fee Schedule (PFS) final rule.

Section 10501(i)(3)(B) of the Affordable Care Act added section 1833(a)(1)(Z) to the Act to specify that Medicare payment for FQHC services under section 1834(o) of the Act shall be 80 percent of the lesser of the actual charge or the PPS amount determined under section 1834(o).

Section 10501(i)(3)(C) of the Affordable Care Act added section 1833(a)(3)(B)(i)(II) of the Act to require that FQHCs that contract with Medicare Advantage (MA) organizations be paid at least the same amount they would have received for the same service under the FQHC PPS.

Section 10501(i)(2) of the Affordable Care Act amended the definition of FQHC services as defined in section 1861(aa)(3)(A) of the Act by replacing the specific references to services provided under section 1861(qq) and

(vv) of the Act (DSMT and MNT services, respectively) with preventive services as defined in section 1861(ddd)(3) of the Act, as established by section 4014(a)(3) of the Affordable Care Act. These changes were effective for services provided on or after January 1, 2011. Accordingly, in the CY 2011 Medicare PFS final rule (75 FR 73417 through 73419, November 29, 2010) we adopted conforming regulations by adding a new § 405.2449, which added the new preventive services definition to the definition of FQHC services effective for services provided on or after January 1, 2011 (see that rule for a detailed discussion regarding preventive services covered under the FQHC benefit and the requirements for waiving coinsurance for such services).

Section 1833(b)(4) of the Act stipulates that the Medicare Part B deductible shall not apply to FQHC services. The Affordable Care Act made no change to this provision; therefore Medicare will continue to waive the Part B deductible for all FQHC services in the FQHC PPS, including preventive services added by the Affordable Care Act.

#### 6. Approach to the FQHC PPS

To enhance our understanding of the services furnished by FQHCs and the unique role of FQHCs in providing services to people from medically underserved areas and populations, we worked closely with HRSA in the development of this proposed rule. They provided valuable expertise on the challenges facing FQHCs in increasing access to health care for underserved populations and the importance of Medicare reimbursement to the overall financial viability of the health centers. In addition to providing patient population and services data from their UDS, HRSA also enabled us to gain additional data on insurance coverage among a subset of FQHC patients from the Community Health Applied Research Network. We believe that the proposals in this proposed rule benefited greatly from their assistance.

Our goal for the FQHC PPS is to create a system in accordance with the statute whereby FQHCs are fairly reimbursed for the services they provide to Medicare patients in the least burdensome manner possible, so that they may continue to provide primary and preventive health services to the communities they serve. We will continue to evaluate our approach based on the comments we receive to this proposed rule in the context of balancing payment requirements, regulatory burden, and the need for

appropriate accountability and oversight.

## II. Establishment of the Federally Qualified Health Center Prospective Payment System (FQHC PPS)

### A. Design and Data Sources for the FQHC PPS

#### 1. Overview of the PPS Design

In developing the new PPS for FQHCs, we considered the statutory requirements at 1834(o)(1)(A) of the Act requiring that the new PPS take into account the type, intensity, and duration of services furnished by FQHCs, and allows for adjustments, including geographic adjustments, as determined appropriate by the Secretary. We explored several approaches to the methodology and modeled options for calculating payment rates and adjustments under a PPS based on data from Medicare FQHC cost reports and Medicare FQHC claims. Each option was evaluated to determine which approach would result in the most appropriate payment structure with the least amount of reporting requirements and administrative burden for the FQHCs.

One approach we considered would align payment for FQHCs with payment for services typically furnished in physician offices, making separate payment for each coded service and adopting the relative values from the PFS. While this approach follows established payment policy for services furnished in an outpatient clinic setting, it unbundles a FQHC encounter-based payment into a fee schedule structure, which could encourage excess utilization in the long-term, and would increase coding and billing requirements for FQHCs.

Another approach for the PPS would be to pay a single encounter-based rate per beneficiary per day. The encounter-based rate would be based on an average cost per visit, which would be calculated by aggregating the data for all FQHCs and dividing their total costs by their total visits incurred during a specified time period. An encounter-based payment rate is consistent with the agency's commitment to greater bundling of services, which gives FQHCs the flexibility to implement efficiencies to reduce over-utilization of services. FQHCs are accustomed to billing for a single visit, as they are currently paid through an AIR that is based on a FQHC's own average cost per visit. An encounter-based payment is also similar to Medicaid payment systems, and Medicaid constitutes a large portion of FQHC billing (approximately 47 percent, compared to

approximately 9 percent for Medicare). We believe an encounter-based payment rate for the FQHC PPS would provide appropriate payment while remaining administratively simple. Therefore, we propose an encounter-based rate per beneficiary per day as the basis for payment under the proposed FQHC PPS. Additional details regarding the encounter-based rate setting methodology, including adjustments to the encounter-based rate, are discussed in section II. C. of this proposed rule.

## 2. Medicare FQHC Cost Reports

As required by section 1834(o)(2)(B)(i) of the Act, initial payments (Medicare and coinsurance) under the FQHC PPS must equal 100 percent of the estimated amount of reasonable costs, as determined without the application of the current system's UPLs or productivity standards that can reduce a FQHC's per visit rate. In order to estimate 100 percent of reasonable costs, we obtained Medicare cost report data for free-standing FQHCs (Form CMS 222-92) from the March 31, 2013, Healthcare Cost Report Information System (HCRIS) quarterly update. We included in our analysis FQHC costs reports that had allowable costs (excluding pneumococcal and influenza vaccines) and Medicare visits, and we used one cost report for each FQHC cost reporting entity. For 69 percent of cost reporting entities, the only available cost report covered 1 full year (with cost reporting periods ending between June 30, 2011 and June 30, 2012). For the remaining 31 percent of cost reporting entities, there were multiple cost reports available or the cost reporting period was not exactly 1 year. For cost reporting entities with multiple cost reports available, we selected the most recent cost report, unless an earlier cost report provided us with a better match to the FQHC claims data that was used to model potential adjustments. Because FQHCs with multiple sites can file consolidated cost reports, we also ensured that we selected only one cost report for each delivery site.

As required by statute, we estimated 100 percent of reasonable costs that would have occurred for this period prior to the application of copayments, per visit limits, or productivity adjustments (see discussion of the baseline for the PPS in section II. D. of this proposed rule). We also note that, under section 1833(c) of the Act, outpatient mental health services will be paid on the same basis as other Part B services as of January 1, 2014. As the FQHC PPS is to be implemented for cost reporting periods beginning on or after October 1, 2014, we adjusted the cost

report data to remove the application of the outpatient mental health limitations that were in effect when these reported services were incurred.

After eliminating the current payment limits and adjustments, we calculated the average cost per visit for each cost reporting entity by dividing the total estimated Medicare costs (excluding vaccines) reported by the total number of Medicare visits reported. We found that the mean cost per visit for all cost reporting entities was about 11 percent higher than the median cost per visit.

In developing the FQHC PPS, section 1834(o)(1)(A) of the Act allows for adjustments determined appropriate by the Secretary. Consistent with this authority, we excluded statistical outliers from the sample. We identified all cost reporting entities with an average cost per visit that was greater than three standard deviations above or below the geometric mean of the overall average cost per visit among cost reporting entities, and we excluded their data from our sample. In the aggregate, after trimming the data for outliers and before adjustments for price inflation, we estimate that eliminating current payment limits and adjustments would increase payments to FQHCs by about 28 percent. For additional information on the impact of the FQHC PPS, see section VII. of this proposed rule.

## 3. Medicare FQHC Claims

In developing the Medicare FQHC PPS, section 1834(o)(1)(A) of the Act requires us to take into account the type, intensity, and duration of FQHC services, and allows other adjustments, such as geographic adjustments. Section 1834(o)(1)(B) of the Act also granted the Secretary of HHS (the Secretary) the authority to require FQHCs to submit such information as may be required in order to develop and implement the Medicare FQHC PPS, including the reporting of services using HCPCS codes. The provision requires that the Secretary impose this data collection submission requirement no later than January 1, 2011.

Beginning with dates of service on or after January 1, 2011, when billing Medicare, FQHCs are required to report all pertinent services provided and list the appropriate HCPCS code for each line item along with revenue code(s) for each FQHC visit. The additional line item(s) and HCPCS code reporting were for informational and data gathering purposes to inform development of the PPS rates and potential adjustments. Other than for calculating the amount of coinsurance to waive for preventive services for which the coinsurance is

waived, these HCPCS codes are not utilized to determine current Medicare payment to FQHCs. We propose to use the HCPCS codes in the FQHC claims data to support the development of the FQHC PPS rate and adjustments and for making payment under the PPS.

In order to model potential adjustments, we obtained final action Medicare FQHC claims (type of bill 73X and 77X) from the CMS Integrated Data Repository (IDR) with dates of service between January 2010 and December 2012. We excluded claims that did not list a revenue code or HCPCS code that represented a face-to-face encounter, as these services would not qualify for an AIR payment. We also excluded claim lines with revenue codes that did not correspond to FQHC services or that lacked valid HCPCS codes.

In 2011, approximately 90 percent of FQHC claims listed a single HCPCS code that defined the overall type of encounter (for example, a mid-level office visit (HCPCS code 99213)). We found similar reporting trends in 2012 FQHC claims. We sought to validate the completeness of HCPCS reporting by analyzing coding on primary care physician claims for PFS data. When compared, the findings from the simulated PFS data and actual FQHC data were similar in the type and distribution of the reported encounter code (that is, the HCPCS code that represents the visit that qualifies the FQHC encounter for an AIR payment). When ancillary services (services that are not separately billable in a FQHC) were billed with an office visit code, both FQHC and analogous primary care physician office claims demonstrated a tendency to include only one to two ancillary services in addition to the encounter code about 35 percent of the time, and FQHCs billed only a single ancillary service about 10 percent of the time.

We believe that the reporting trends in the FQHC claims are consistent with the coding of analogous primary care physician office claims, thereby suggesting that the limited number of ancillary services listed on FQHC claims appropriately describe the services furnished during an encounter.

## 4. Linking Cost Reports and Claims To Compute the Average Cost per Visit

In order to compute the adjusted charges or "estimated cost" for determining the average cost per visit, we linked claims to cost reports by delivery site, as determined by the CMS Certification Number (CCN) reported on the claim. Since the HCPCS code reporting requirement on claims did not go into effect until January 1, 2011,

claims for earlier dates of service did not include the detail required to model adjustments based on type, intensity, or duration of services. Cost reports with reporting periods that began on or after January 1, 2011, accounted for 81 percent of the sample, and we linked these cost reports to Medicare FQHC claims with service dates that matched their respective cost reporting periods. For cost reports that were at least 1 full year in length and with a cost reporting period that began in 2010, we linked these cost reports to 2011 Medicare FQHC claims.

The linked cost report and claims data were then used to calculate a cost-to-charge ratio (CCR) for each cost-reporting entity. To approximate data not available on the cost report, we developed these CCRs to convert each FQHC's charge data, as found on its claims, to costs. We calculated an average cost per visit by dividing the total allowable costs (excluding pneumococcal and influenza vaccinations) by the total number of visits reported on the cost report. We calculated an average charge per visit by dividing the total charges of all visits for all sites under a cost-reporting entity and dividing that sum by the total number of visits for that cost-reporting entity. We calculated a cost-reporting entity-specific CCR by dividing the average cost per visit (based on cost report data) by the average charge per visit (based on claims data). We multiplied the submitted charges for each claim by these cost-reporting entity-specific CCRs to estimate FQHC costs per visit. We note that other Medicare payment systems calculate CCRs based on total costs and total charges reported on Medicare cost reports. However, this information is not currently available on the free-standing FQHC cost report, Form CMS-222-92.

We found that the mean estimated cost per visit in the linked claims data was about 9 percent higher than the median estimated cost per visit. In developing the FQHC PPS, section 1834(o)(1)(A) of the Act allows for adjustments determined appropriate by the Secretary. Consistent with this authority, we excluded statistical outliers from the linked claims sample. We identified visits with estimated costs that were greater than three standard deviations above or below the geometric mean of the overall average estimated cost per visit, and we excluded those visits from our sample.

After trimming the linked claims data for outliers, the final data set included 5,245,961 visits from 5,236,607 distinct claims encompassing 6,135,830 claim

lines. This included 5,223,512 daily visits furnished to 1,244,873 beneficiaries that visited 3,509 delivery sites under 1,141 cost-reporting entities.

#### *B. Policy Considerations for Developing the FQHC PPS Rates and Adjustments*

In developing the FQHC PPS rates and adjustments, we considered existing payment policies to determine potential interactions with the implementation of the FQHC PPS. We discuss these policies and our proposed changes below.

##### **1. Multiple Visits on the Same Day**

The current all-inclusive payment system was designed to reimburse FQHCs for services furnished to Medicare beneficiaries at a rate that would take into account all costs associated with the provision of services (for example, space, supplies, practitioners, etc.) and reflect the aggregate costs of providing services over a period of time. In some cases, the per visit rate for a specific service is higher than what would be paid based on the PFS, and in some cases it is lower than what would be paid based on the PFS, but at the end of the reporting year when the cost report is settled, the Medicare payment is typically higher for FQHCs than if the services were billed separately on the PFS.

The current payment system was also designed to minimize reporting requirements, and as such, the all-inclusive payment reflects all the services that a FQHC provides in a single day to an individual beneficiary, regardless of the length or complexity of the visit or the number or type of practitioners seen. This would include situations where a FQHC patient has a medically-necessary face-to-face visit with a FQHC practitioner, and is then seen by another FQHC practitioner, including a specialist, for further evaluation of the same condition on the same day, or is then seen by another FQHC practitioner (including a specialist) for evaluation of a different condition on the same day. Except for certain preventive services that have coinsurance requirements waived, FQHCs have not been required to submit coding of each service in order to determine Medicare payment.

Although the all-inclusive payment system was designed to provide enhanced reimbursement that reflects the costs associated with a visit in a single day by a Medicare beneficiary, an exception to the one encounter payment per day policy was made for situations when a patient comes into the FQHC for a medically-necessary visit, and after leaving the FQHC, has a medical issue

that was not present at the visit earlier that day, such as an injury or unexpected onset of illness. In these situations, the FQHC has been permitted to be paid separately for two visits on the same day for the same beneficiary.

In response to a comment to the June 12, 1992 final rule with comment period (57 FR 24961), in the April 3, 1996 final rule (61 FR 14640), we revised the regulations to allow separate payment for mental health services furnished on the same day as a medical visit. The CY 2007 PFS final rule (71 FR 69665) subsequently revised the regulations to allow FQHCs to receive separate payment for DSMT and MNT. The ability to bill separately for Medicare's IPPE is in manuals only and not in regulation, with the manual language noting this is a once in a lifetime benefit. There are no statutory requirements to pay FQHCs separately for these services when they occur on the same day as another billable visit.

In developing the new PPS for FQHCs, we reviewed all existing policies for FQHC payments to determine if the policies should remain the same as under the current system, or if the policies should be updated or in some cases revised. As part of this process, we reviewed the existing regulations and policies that allow separate payment for subsequent illness or injury, mental health services, DSMT/MNT, or IPPE when they occur on the same day as an otherwise billable visit. To do this, we examined 2011 Medicare FQHC claims data in order to determine the frequency of FQHCs billing for more than one visit per day for a beneficiary. We then analyzed the potential financial impact on FQHCs and the potential impact on access to care if billing for more than 1 visit per day for these specific situations was no longer permitted. We also considered several alternative options, such as an adjustment of the per visit rate when multiple visits occur in the same day, or the establishment of a separate per visit rate for subsequent visit due to illness or injury, mental health services, DSMT/MNT, or IPPE.

An analysis of data from Medicare FQHC claims with dates of service between January 1, 2011 and June 30, 2012, indicate that it is uncommon for FQHCs to bill more than one visit per day for the same beneficiary (less than 0.5 percent of all visits), even though the ability to do so has been in place since 1992 for subsequent illness/injury, since 1996 for mental health services, and since 2007 for DSMT/MNT. Even allowing for any underreporting in the data, it is clear that billing multiple visits on the same day for an individual

is a rare event, and eliminating the ability to do so would not significantly impact either the FQHC payment or a beneficiary's access to care. Eliminating this ability to bill for multiple visits on the same day would also simplify billing by removing the need for modifier 59, which signifies that the conditions being treated are totally unrelated and services are provided at separate times of the day, and the subsequent claims review that occurs when modifier 59 appears on a claim.

Because the data show that multiple visits are infrequently occurring on the same day, we determined that the level of effort required to develop an adjustment or a separate rate for each of these services when furnished on the same day as a medical visit would not be justified. Therefore, we are proposing to revise § 405.2463(b) to remove the exception to the single encounter payment per day for FQHCs paid under the proposed PPS. This policy is consistent with an all-inclusive methodology and reasonable cost principles and would simplify billing and payment procedures. Thus, the proposed PPS encounter rate will also reflect a daily (per diem) rate and result in a slightly higher payment than one calculated based on multiple encounters on the same day.

Based on the Medicare claims data provided by FQHCs that indicates a very low occurrence of multiple visits billed on the same day, we believe this proposal would not significantly impact total payment or access to care. However, we understand that there may be many possible reasons why the rate of billing for more than one visit per day has been low (for example, difficulty in scheduling more than one type of visit on the same day) and that FQHCs can provide integrated, patient-centered health care services in a variety of ways. Therefore, we are interested in comments that address whether there are factors that we have not considered, particularly in regards to the provision of mental health services. We invite public comment on whether this change would impact access to these services or the integration of services in underserved communities. The benefits of retaining the ability to bill for more than one visit on the same day should be considered along with the proposed increased per diem payment rate under the PPS and the complexity of developing a claims processing system to allow for this exception in the new PPS.

## 2. Preventive Laboratory Services and Technical Components of Other Preventive Services

The core services of the FQHC benefit are generally billed under the professional component. The benefit categories for laboratory services and diagnostic tests generally are not within the scope of the FQHC benefit, as defined under section 1861(aa) of the Act. For services that can be split into professional and technical components, we have instructed FQHCs to bill the professional component as part of the AIR, and separately bill the Part B MAC under different identification for the technical portion of the service on a Part B practitioner claim (for example, Form CMS-1500). If the FQHC operates a laboratory, is enrolled under Medicare Part B as a supplier, and meets all applicable Medicare requirements related to billing for laboratory services, it may be able to bill as a supplier furnishing laboratory services under Medicare Part B. When FQHCs separately bill these services, they are instructed to adjust their cost reports and carve out the cost of associated space, equipment, supplies, facility overhead, and personnel for these services.

As part of the implementation of the FQHC benefit, we used our regulatory authority to enumerate preventive primary services, as defined in 42 CFR 405.2448, which may be paid for when provided by FQHCs (57 FR 24980, June 12, 1992, as amended by 61 FR 14657, April 3, 1996). These preventive primary services include a number of laboratory tests, such as cholesterol screening, stool testing for occult blood, dipstick urinalysis, tuberculosis testing for high risk patients, and thyroid function tests. The preventive services added to the FQHC benefit pursuant to the Affordable Care Act, as defined by section 1861(ddd)(3) of the Act and codified in 42 CFR 405.2449, include laboratory test and diagnostic services, such as screening mammography, diabetes screening tests, and cardiovascular screening blood tests.

Professional services or professional components of primary preventive services (as defined in § 405.2448) and preventive services (as defined in § 405.2449) are billed as part of the AIR. The preventive laboratory tests and technical components of other preventive tests are not paid under the AIR and FQHCs are instructed to bill separately for these services. We are not proposing a change in billing procedures, and we do not intend to include payment for these services under the FQHC PPS. We note this

payment structure simplifies billing procedures as laboratory tests and technical components of diagnostic services are always billed separately to Part B and are never included as part of the FQHC's encounter rate. (Note that both the professional and technical components of FQHC primary preventive services and preventive services remain covered under Part B).

An analysis of FQHC claims indicates that FQHCs are listing some preventive laboratory tests and diagnostic services on their claims. In 2011 through 2012, less than 5 percent of Medicare FQHC claims listed HCPCS codes related to laboratory tests or diagnostic services. For purposes of modeling adjustments to the FQHC PPS rate, we considered excluding these line items from the encounter charge and proportionately reducing the cost-reporting entity's related cost report data. However, it was not always clear whether the line item charges for these laboratory tests or diagnostic services were included in the total charge for the claim or were listed for informational purposes only. As such, we chose not to adjust the claims or cost report data based on the presence of the related HCPCS codes on the claims. As part of the implementation of the FQHC PPS, we plan to clarify the appropriate billing procedures through program instruction.

## 3. Vaccine Costs

Section 1834(o)(2)(B)(i) of the Act requires that the initial PPS rates must be set so as to equal in the aggregate 100 percent of the estimated amount of reasonable costs that would have occurred for the year if the PPS had not been implemented. This 100 percent must be calculated prior to application of copayments, per visit limits, or productivity adjustments. We believe that this language directed us to develop a PPS to pay for items currently affected by the UPL and the productivity screen, which would pay for items currently included in the calculation of reasonable costs and paid under the AIR.

The administration and payment of influenza and pneumococcal vaccines is not included in the AIR. They are paid at 100 percent of reasonable costs through the cost report. The cost and administration of HBV is covered under the FQHC's AIR when furnished as part of an otherwise qualifying encounter. We are not proposing any changes to this payment structure. We would continue to pay for the costs of the influenza and pneumococcal vaccines and their administration through the cost report, and other Medicare-covered

vaccines as part of the encounter rate. The costs of hepatitis B vaccine and its administration were included in the calculation of reasonable costs used to develop the FQHC PPS rates, and we would pay for these services under the FQHC PPS when furnished as part of an otherwise qualifying encounter.

### C. Risk Adjustments

Section 1834(o)(1)(A) of the Act provides that the FQHC PPS may include adjustments, including geographic adjustments, that are determined appropriate by the Secretary. We discuss our proposed adjustments below.

#### 1. Alternative Calculations for Average Cost per Visit

As discussed in section II. of this proposed rule, we used the claims data to calculate an average cost per visit by dividing the total estimated costs (\$788,547,531) by the total number of daily visits (5,223,512).

$$\text{Average cost per daily visit} = \$788,547,531 / 5,223,512 = \$150.96$$

We also examined how the average cost per visit would differ under current policy, which allows separate payment for subsequent illness or injury, mental health services, DSMT/MNT or IPPE when they occur on the same day as an otherwise billable visit. While the total estimated cost was the same (\$788,547,531), the total number of visits in the denominator (5,245,961) did not combine multiple visits on the same day of service into 1 daily visit.

$$\text{Average cost per visit} = \$788,547,531 / 5,245,961 = \$150.32$$

We also derived an average cost per visit from the cost reports by dividing the total estimated Medicare costs (excluding vaccines) reported (\$832,387,663) by the total number of Medicare visits reported (5,374,217). Unlike the previous calculations based on claims data, the variables derived from the cost reports summarize total costs and visits by cost reporting entity and could not be trimmed of individual visits with outlier values. Also, we note that the total number of Medicare visits reported on the cost reports reflects current policy which allows for multiple visits on the same day of service, and we could not calculate an average cost per daily visit using only cost report data.

$$\text{Average cost per visit from cost report data} = \$832,387,663 / 5,374,217 = \$154.89$$

Consistent with our proposal to remove the exception to the single encounter payment per day, we propose

to use the average cost per daily visit of \$150.96, as calculated based on adjusted claims data as the PPS rate prior to any risk adjustment. We note that the alternative calculations yield an average cost per visit that differs from \$150.96 by less than 3 percent. We also note that these calculations were derived based on the cost report and claims data available during our development of this proposed rule and are subject to change in the final rule based on more current data.

#### 2. Geographic Adjustment Factor

We propose to adjust the FQHC PPS rate for geographic differences. This adjustment will be made to the cost of inputs by applying an adaptation of the GPCIs used to adjust payment under the PFS. Established in 1848(e) of the Act, GPCIs adjust payments for geographic variation in the costs of providing services and consist of three component GPCIs: the physician work GPCI, the practice expense GPCI, and the malpractice insurance GPCI.

Because FQHCs furnish services that are analogous to those furnished by physicians in outpatient clinic settings, we believe it would be consistent to apply geographic adjustments similar to those applied to services furnished under the PFS. We calculated a geographic adjustment factor (GAF) for each encounter based on the delivery site's locality using the proposed CY 2014 work and practice expense GPCIs and the proposed cost share weights for the CY 2014 GPCI update, as published in the CY 2014 PFS proposed rule (July 19, 2013 (78 FR 43282)).

For modeling geographic adjustments for this FQHC PPS proposed rule, we did not use the proposed CY 2015 work and practice expense GPCIs that also were published in the CY 2014 PFS proposed rule. We note that the FQHC PPS GAFs are subject to change in the final FQHC PPS rule based on more current data, including the finalized PFS GPCI and cost share weight values.

We excluded the PFS malpractice GPCI from the calculation of the GAF as FQHCs that receive section 330 grant funds are eligible to apply for medical malpractice coverage under FSHCAA of 1992 and FSHCAA of 1995. Without the cost share weight for the malpractice GPCI, the sum of the proposed PFS work and PE cost share weights (0.50866 and 0.44839, respectively) is less than one. In calculating the FQHC GAFs, prior to applying the proposed work and PE cost share weights to the GPCIs, we scaled these proposed cost share weights so they would total 100 percent while still retaining weights

relative to each other (0.53149 and 0.46851, respectively).

We calculated each locality's GAF as follows:

$$\text{Geographic adjustment factor} = (0.53149 \times \text{Work GPCI}) + (0.46851 \times \text{PE GPCI})$$

We included the GAF adjustment when modeling all other potential adjustments. The GAF will be applied based on where the services are furnished and may vary among FQHCs that are part of the same organization. The list of proposed GAFs by locality is in Addendum A of this proposed rule and is also available as a downloadable file at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/FQHCPPS/index.html>.

#### 3. New Patient or Initial Medicare Visit

Based on an analysis of claims data, we found that the estimated cost per encounter was approximately 33 percent higher when a FQHC furnished care to a patient that was new to the FQHC or to a beneficiary receiving a comprehensive initial Medicare visit (that is, an IPPE or an initial AWW). We propose to adjust the encounter rate to reflect the 33 percent increase in costs when FQHCs furnish care to new patients or when they furnish a comprehensive initial Medicare visit, which could account for the greater intensity and resource use associated with these types of services. Our proposed risk adjustment factor is 1.3333 (as discussed further in section V. of this proposed rule).

#### 4. Other Adjustment Factors Considered

We considered multiple other adjustments such as demographics (age and sex), clinical conditions, duration of the encounter, etc. However, we found many of these other adjustments to have limited impact on costs or to be too complex and largely unnecessary for the FQHC PPS.

We modeled whether there were differences in resource use for mental health visits and preventive care visits when compared to medical care visits. We found that mental health encounters had approximately 1 percent lower estimated costs per visit relative to medical care visits, and we did not consider this a sufficient basis for proposing a payment adjustment. We found that preventive care encounters had approximately 18 percent higher estimated costs per visit. This difference in resource use declines to an 8 percent higher estimated cost per visit after adjusting for the GAF and the proposed 1.3333 risk adjustment factor for a patient that is new to the FQHC or for

a beneficiary receiving a comprehensive initial Medicare visit (that is, an IPPE or an initial AWW), indicating that a significant amount of preventive care visits were IPPEs or initial AWWs. We are not proposing a payment reduction for preventive care encounters and we note that a significant amount of the more costly preventive care encounters would otherwise be recognized and paid for with the proposed 1.3333 risk adjustment factor for a beneficiary receiving a comprehensive initial Medicare visit. We note that an 8 percent adjustment would increase payment for preventive visits, and we welcome comments on whether an adjustment for preventive care encounters would be appropriate, noting that there would be redistributive effect which would result in a decrease in the payment rate for other visits.

We considered patient age and sex as potential adjustment factors as these demographic characteristics have the advantage of being objectively defined. However, both of these characteristics had a limited association with estimated costs, which did not support the use of these demographic characteristics as potential adjustment factors.

We tested for an association between commonly reported clinical conditions and the estimated cost per visit. A number of clinical conditions were found to be associated with approximately 5 to 10 percent higher costs per visit, but we are concerned that claims might not include all potentially relevant secondary diagnoses. In addition, we would need to consider how to minimize the complexity of such an adjustment with a limited number of clinically meaningful groupings.

We considered the duration of encounters (in minutes) as a potential adjustment factor. Many of the evaluation and management (E/M) codes commonly seen on FQHC claims are associated with average or typical times, and there was a strong association between these associated times and the estimated cost per encounter. However, these minutes are guidelines that reflect the face-to-face

time between the FQHC practitioner and the beneficiary for that E/M service, and they would not indicate the total duration of the FQHC encounter. Moreover, many of the codes used to describe the face-to-face visit that qualifies an encounter, such as a subsequent annual wellness visit, are not associated with average or typical times.

We considered adjusting payment based on the types of services furnished during a FQHC encounter. Our analysis of FQHC claims data indicates that information regarding ancillary services provided by FQHCs appears to be limited. As a result, there is a risk that adjustments for the types of services being provided would be based on incomplete information and result in payments under the PPS that do not accurately reflect the cost of providing those services.

#### 5. Report on PPS Design and Models

We contracted with Arbor Research for Collaborative Health to assist us in designing a PPS for FQHCs. Arbor Research modeled options for calculating payment rates and adjustments under a PPS based on data from Medicare FQHC cost reports and Medicare FQHC claims. A report detailing the options modeled in the development of the PPS will be available at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/FQHCPPS/index.html>.

#### D. Base Rate Calculation

We calculated a base rate for the FQHC PPS by adjusting the average cost per visit to account for the proposed adjustment factors. We calculated an average payment multiplier using the average GAF (0.9944) multiplied by the average risk adjustment for non-new patient/initial visits (1.0), as weighted by the percent of encounters that represented non new patient/initial visits (0.9722), and we added this to the average GAF (0.9944) multiplied by the average risk adjustment for new patient/initial visits (1.3333), as weighted by the percent of encounters that represented new patient/initial visits (0.0278):

*Average payment multiplier =*

$$0.9721(1.00)/(0.9944) +$$

$$0.0279(1.3333)/(0.9944) = 1.0036$$

We calculated a base rate amount by multiplying the reciprocal of the average payment multiplier by the average cost per visit. Using the average cost per daily visit:

$$\text{Base rate per daily visit} = \$150.96 \times (1/1.0036) = \$150.42$$

The base rate per daily visit of \$150.42 reflects costs through June 30, 2012, and does not include an adjustment for price inflation. As the FQHC PPS is to be implemented beginning October 1, 2014, we propose to update the base rate to account for the price inflation through September 30, 2014. We propose to use the MEI as finalized in the CY 2011 PFS final rule (75 FR 73262 through 73270). The MEI is an index reflecting the weighted-average annual price change for various inputs involved in furnishing physicians' services. The MEI is a fixed-weight input price index, with an adjustment for the change in economy-wide, private nonfarm business multifactor productivity.

We propose to inflate the base rate by approximately 1.8 percent, reflecting the growth in the MEI from July 1, 2012 through September 30, 2014. We also propose to use a forecasted MEI update of 1.7 percent for the 15-month period of October 1, 2014, through December 31, 2015, to calculate the first year's base payment amount under the PPS. The 15-month update factor is based on the 2013Q2 forecast of the 2006-based MEI, the most recent forecast available at the time of this proposed rule. The adjusted base payment that reflects the MEI historical updates and forecasted updates to the MEI is \$155.90. This payment rate incorporates a combined MEI update factor of 1.0364 that trends dollars forward from July 1, 2012 through December 31, 2015. We also propose if more recent data became available (for example, a more recent estimate of the FY 2006-based MEI), we would use such data, if appropriate, to determine the 15-month FQHC PPS update factor for the final rule.

TABLE 1—BASE RATE PER DAILY VISIT

| Total estimated costs | Daily encounters | Average payment multiplier | Average cost per daily visit | Estimated base rate without adjustment for price inflation | MEI update factor | MEI-adjusted base payment rate |
|-----------------------|------------------|----------------------------|------------------------------|--|-------------------|--------------------------------|
| \$788,547,531         | 5,223,512        | 1.0036                     | \$150.96                     | \$150.42   | 1.0364            | \$155.90                       |

*MEI-adjusted base payment rate* =  
 $\$150.96 \times (1/1.0036) \times 1.0364 =$   
 $\$155.90$

Thus, we propose a base payment rate of \$155.90 per beneficiary per day for the proposed FQHC PPS. We note that this base rate is subject to change in the final rule based on more current data. (See the Impact Analysis in section VII of this proposed rule for comparisons of the PPS rates to payments under the AIR.)

Payments to FQHCs would be calculated as follows:

Base payment rate  $\times$  GAF = PPS payment

In calculating the payment, the proposed base payment rate is \$155.90, and the GAF would be based on the locality of the delivery site. (See section II.C. of this proposed rule for a discussion of the GAF and the Addendum to this proposed rule for the list of proposed GAFs.)

If the patient is new to the FQHC, or the FQHC is furnishing an initial comprehensive Medicare visit, the payment would be calculated as follows:

Base payment rate  $\times$  GAF  $\times$  1.3333 = PPS payment

In calculating the payment, 1.3333 represents the risk adjustment factor applied to the PPS payment when FQHCs furnish care to new patients or when they furnish a comprehensive initial Medicare visit. (See section II.C. of this proposed rule for a discussion of the risk adjustment for new patients or initial comprehensive Medicare visits.)

### E. Implementation

#### 1. Transition Period and Annual Adjustment

Section 1834(o)(2) of the Act requires implementation of the FQHC PPS for FQHCs with cost reporting periods beginning on or after October 1, 2014. Cost reporting periods are typically 12 months, and do not usually exceed 13 months. Therefore, we expect that all FQHCs would be transitioned to the PPS by the end of 2015, or 15 months after the October 1, 2014 implementation date.

FQHCs would transition into the PPS based on their cost reporting periods. We note that a change in cost reporting periods that is made primarily to maximize reimbursement would not be acceptable under established cost reporting policy (see 42 CFR 413.24(f)(3) and the Provider Reimbursement Manual Part I, section 2414, and Part II, section 102.3). The claims processing system will maintain the current system

and the PPS until all FQHCs have transitioned to the PPS.

We propose to transition the PPS to a calendar year update for all FQHCs, beginning January 1, 2016, because many of the PPS files we are proposing to use are updated on a calendar year basis. Section 1834(o)(2)(B)(ii)(I) of the Act requires us to adjust the FQHC PPS rate by the percentage increase in the MEI for the first year after implementation. However, while transitioning the PPS to a calendar year, we propose to defer the first MEI statutory adjustment to the PPS rate from October 1, 2015, to December 31, 2015 (we note that our proposed base payment rate incorporates a forecasted percentage increase in the MEI through December 31, 2015).

#### 2. Medicare Claims Payment

Claims processing systems would need to be revised through program instruction to accommodate the new rate and associated adjustments. Medicare currently pays 80 percent of the AIR for all FQHC claims, except for mental health services that are subject to the mental health payment limit. Section 1833(a)(1)(z) of the Act requires that Medicare payment under the FQHC PPS should be 80 percent of the lesser of the provider's charge or the PPS rate. We are considering revisions to the claims processing system that would reject claims in which the qualifying visit describes a service that is outside of the FQHC benefit, such as inpatient hospital E/M services or group sessions of DSMT and MNT. We are considering revisions that would reject line items for technical components such as x-rays, laboratory tests, and durable medical equipment which will not be paid as part of the FQHC PPS and would be billed separately to Medicare Part B. We also are considering revisions that would allow for the informational reporting of influenza and pneumococcal vaccines and their administration, while excluding the line item charges, as these items would continue to be paid through the cost report.

#### 3. Beneficiary Coinsurance

Section 1833(a)(1)(Z) of the Act requires that FQHCs be paid up to 80 percent of their reasonable costs by Medicare after subtracting beneficiary coinsurance. Under the current reasonable cost payment system, beneficiary coinsurance for FQHC services is assessed based on the FQHC's charge, which can be more than coinsurance based on the AIR, which is based on costs. An analysis of a sample of FQHC claims data for dates of service

between January 1, 2011 through June 30, 2012 indicated that beneficiary coinsurance based on 20 percent of the FQHCs' charges was approximately \$23 million higher, or 18 percent more, than if coinsurance had been assessed based on 20 percent of the lesser of the FQHC's charge or the applicable all-inclusive rate.

Section 1833(a)(1)(Z) of the Act requires that Medicare payment under the FQHC PPS should be 80 percent of the lesser of the actual charge or the PPS rate. The statute makes no specific provision to revise the coinsurance. We propose that coinsurance would be 20 percent of the lesser of the FQHC's charge or the PPS rate. We believe that the proposal to change the method to determine coinsurance is consistent with the statutory change to the FQHC Medicare payment and is consistent with statutory language in section 1866(a)(2)(A) and 1833(a)(3)(A) of the Act and elsewhere that addresses coinsurance amounts and Medicare cost principles. If finalized, total payment to the FQHC, including both Medicare and beneficiary liability, would not exceed the FQHC's charge or the PPS rate.

#### 4. Waiving Coinsurance for Preventive Services

Effective January 1, 2011, Medicare waives beneficiary coinsurance for eligible preventive services furnished by a FQHC. Medicare requires detailed HCPCS coding on FQHC claims to ensure that coinsurance is not applied to the line item charges for these preventive services.

For FQHC claims that include a mix of preventive and non-preventive services, we propose that Medicare contractors compare payment based on the FQHC's charge to payments based on the PPS encounter rate and pay the lesser amount. However, the current approach to waiving coinsurance for preventive services, which relies solely on FQHC reported charges, would be insufficient under the FQHC PPS. As Medicare payment under the FQHC PPS is required to be 80 percent of the lesser of the FQHCs charge or the PPS rate, we also need to determine the coinsurance waiver for payments based on the PPS rate.

We considered using the proportion of the FQHC's line item charges for preventive services to total claim charges to determine the proportion of the FQHC PPS rate that would not be subject to coinsurance. This approach would preserve the encounter-based rate while basing the coinsurance reduction on each FQHC's relative assessment of resources for preventive services. However, the charge structure among

FQHCs varies, and beneficiary liability for the same mix of FQHC services could differ significantly based on the differences in charge structures.

Where preventive services are coded on a claim, we propose to use payments under the PFS to determine the proportional amount of coinsurance that should be waived for payments based on the PPS encounter rate. While physician-administered Part B drugs and routine venipuncture will be paid under the FQHC PPS rate, we note that the Medicare Part B rates for these items are not included in the PFS payment files. Therefore, when determining this proportionality of payments, we would also consider PFS payment limits for Part B drugs, as listed in the Medicare Part B Drug Pricing File, and the national payment amount for routine venipuncture (HCPCS 36415). Although FQHCs might list HCPCS for which we do not publish a payment rate in these files, a review of 2011 claims data indicated that the vast majority of line items with HCPCS representing services that will be paid under the FQHC PPS were priced in these sources. As such, we believe that referencing only the payment rates listed in these sources would be both sufficient and appropriate for determining the amount of coinsurance to waive for preventive services provided in FQHCs, without changing the total payment (Medicare and coinsurance). Since Medicare payment under the FQHC PPS is required to be 80 percent of the lesser of the FQHC's charges or the PPS rate, we would continue to use FQHC-reported charges to determine the amount of coinsurance that should be waived for payments based on the FQHC's charge. Total payment to the FQHC, including both Medicare and beneficiary liability, would not exceed the FQHC's charge or the PPS rate.

Our proposed approach for waiving coinsurance for preventive services preserves an encounter-based rate, and the calculation is similar to the current coinsurance calculation based on charges. However, this calculation is fairly complex for the claims processing systems. It may also be difficult for providers to replicate, and FQHCs might not know how much coinsurance would be assessed before the MAC issues the remittance advice.

As an alternative approach, we considered unbundling all services when a FQHC claim includes a mix of preventive and non-preventive services, and we would exclude these types of claims from calculation of the FQHC base encounter rate. We would use payments under the Medicare PFS to pay separately for every service listed

on the claim. While this approach is inconsistent with an all-inclusive payment, it would simplify waiving coinsurance for preventive services and pay preventive services comparably to PFS settings. However, the vast majority of FQHC claims list only one HCPCS, and unbundling all services introduces coding complexity that might underpay FQHCs for an encounter if they do not code all furnished ancillary services. In addition, payment for preventive services under the PFS will be less, in many cases, than the PPS encounter rate.

Instead of unbundling all services when a FQHC claim includes a mix of preventive and nonpreventive services, we considered the use of PFS payment rates to pay separately for preventive services billed on the FQHC claim, while paying for the non-preventive services under the FQHC PPS rate. However, this would be problematic when the preventive services represent the service that would qualify the claim as a FQHC encounter (for example, IPPE, AWW, MNT). Under current payment policy, the remaining ancillary services would not be eligible for an encounter payment without an additional, qualifying visit on the same claim.

We also considered using the dollar value of the coinsurance that would be waived under the PFS to reduce the FQHC encounter-based coinsurance amount when preventive services appear on the claim. However, this could lead to anomalous results, such as negative coinsurance if the preventive service(s) would have been paid more under the PFS than the FQHC PPS rate, and the amount of coinsurance waived under the PFS would exceed 20 percent of the FQHC PPS rate. We also were concerned that the reduction in coinsurance would seem insufficient if the payment rate for the preventive service(s) was very low under the PFS.

We believe that using the proportionality of PFS payments to determine the coinsurance waiver would facilitate the waiving of coinsurance while preserving the all-inclusive nature of the encounter-based rate with the least billing complexity. Therefore, we propose that where preventive services are coded on a claim, we would use payments under the PFS to determine the proportional amount of coinsurance that should be waived for payments based on the PPS encounter rate. We invite public comment on how this proposal would impact FQHCs' administrative procedures and billing practices.

## 5. Cost Reporting

Under section 1815(a) of the Act, providers participating in the Medicare program are required to submit financial and statistical information to achieve settlement of costs relating to health care services rendered to Medicare beneficiaries. This information is required for determining Medicare payment for FQHC services under 42 CFR 405, Subpart X.

The Medicare cost reporting forms show the costs incurred and the total number of visits for FQHC services during the cost reporting period. Using this information, the MAC determines the total payment amount due for covered services furnished to Medicare beneficiaries. The MAC compares the total payment due with the total payments made for services furnished during the reporting period. If the total payment due exceeds the total payments made, the difference is made up by a lump sum payment. If the total payment due is less than the total payments made, the overpayment is collected.

Under the FQHC PPS, Medicare payment for FQHC services will be made based on a predetermined national rate. For services included in the FQHC PPS rate, Medicare cost reports would not be used to reconcile Medicare payments with FQHC costs. However, the statute does not exempt FQHCs from submitting cost reports. In addition, Medicare payments for the reasonable costs of the influenza and pneumococcal vaccines and their administration, allowable graduate medical education costs, and bad debts would continue to be determined and paid through the cost report. We are also considering revisions to the cost reporting forms and instructions that would provide us with information that would improve the quality of our cost estimates, such as the reporting of a FQHC's overall and Medicare specific CCR. We are also considering the types of cost data that would facilitate the potential development of a FQHC market basket that could be used in base payment updates after the second year of the PPS. We also are exploring whether we have audit resources to include FQHCs in the pool of institutional providers that are subject to periodic cost report audits.

## 6. Medicare Advantage Organizations

Section 10501(i)(3)(C) of the Affordable Care Act added section 1833(a)(3)(B)(i)(II) to the Act to require that FQHCs that contract with MA organizations be paid at least the same amount they would have received for the same service under the FQHC PPS.

This provision ensures FQHCs are paid at least the Medicare amount for FQHC services, whether such amount is set by section 1833(a)(3) of the Act or section 1834(o) of the Act. Consistent with current policy, if the MA organization contract rate is lower than the amount Medicare would otherwise pay for FQHC services, FQHCs that contract with MA organizations would receive a wrap-around payment from Medicare to cover the difference. If the MA organization contract rate is higher than the amount Medicare would otherwise pay for FQHC services, there is no additional payment from Medicare. We propose to revise § 405.2469 to reflect this provision.

### III. Additional Proposed Changes Regarding FQHCs and RHCs

#### A. Rural Health Clinic Contracting

Due to the difficulty in recruiting and retaining physicians in rural areas, RHCs have had the option of hiring physicians either as RHC employees or as contractors. However, in order to promote stability and continuity of care, the Rural Health Clinic Services Act of 1977 required RHCs to employ a physician assistant or nurse practitioner (section 1861(aa)(2)(iii) of the Act). We have interpreted the term “employ” to mean that the employer issues a W-2 form to the employee. Section 405.2468(b)(1) currently states that RHCs are not paid for services furnished by contracted individuals other than physicians, and § 491.8(a)(3) does not authorize RHCs to contract with RHC practitioners other than physicians.

In the more than 30 years since this legislation was enacted, the health care environment has changed dramatically, and RHCs have requested that they be allowed to enter into contractual agreements with non-physician RHC practitioners as well as physicians. To provide RHCs with greater flexibility in meeting their staffing requirements, we propose to revise § 405.2468(b)(1) by removing the parenthetical “RHCs are not paid for services furnished by contracted individuals other than physicians,” and revising § 491.8(a)(3) to allow non-physicians to furnish services under contract in RHCs, when at least one NP or PA is employed.

The ability to contract with NPs, PAs, CNMs, CPs, and CSWs would provide RHCs with additional flexibility with respect to recruiting and retaining non-physician practitioners. Practitioners should be employed or contracted to the RHC in a manner that enhances continuity and quality of care.

RHCs would still be required, under section 1861(aa)(2)(iii) of the Act, to

employ a PA or NP. However, as long as there is at least one PA or NP employed at all times (subject to the waiver provision for existing RHCs set forth at section 1861(aa)(7) of the Act), an RHC would be free to enter into contracts with other PAs, NPs, CNM, CPs or CSWs.

#### B. Technical and Conforming Changes

In addition to proposing to codify the statutory requirements for the FQHC PPS in this proposed rule and proposing to allow RHCs to contract with non-physician practitioners, we are proposing edits to correct terminology, clarify policy, delete irrelevant code, and make conforming changes for existing mandates and the new PPS. Some of these changes include the following:

- Removing the terms “fiscal intermediary and carriers” and replacing them with “Medicare Administrative Contractor” or “MAC”. Section 911 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 established the MACs to administer the work that was done by fiscal intermediaries and carriers in administering Medicare programs.
- Removing the payment limitations for treatment of mental psychoneurotic or personality disorders. This payment limitation is being phased out and will no longer be in effect beginning January 1, 2014.
- Updating the regulations to reflect section 410 of the Medicare Modernization Act of 2003 to exclude RHC and FQHC services furnished by physicians and certain other specified types of nonphysician practitioners from consolidated billing under section 1888(e)(2)(A)(ii) of the Act and allows such services to be separately billable under Part B when furnished to a SNF resident of a skilled nursing facility (SNF) during a covered Part A stay (see the July 30, 2004 final rule (69 FR 45818 through 45819). This statutory provision was effective with services furnished on or after January 1, 2005 and was previously implemented through program instruction (CMS Pub. 100–04, Medicare Claims Processing Manual, chapter 6, § 20.1.1).

### IV. Clinical Laboratory Improvement Amendments of 1988 (CLIA)—Enforcement Actions for Proficiency Testing Referral

#### A. Background

On October 31, 1988, Congress enacted the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Pub. L. 100–578. The purpose of

CLIA is to ensure the accuracy and reliability of laboratory testing for all Americans. Under this authority, which was codified at 42 U.S.C. 263a, the Secretary issued regulations implementing CLIA on February 28, 1992 at 42 CFR part 493 (57 FR 7002). The regulations specify the standards and specific conditions that must be met to achieve and maintain CLIA certification. CLIA certification is required for all laboratories, including but not limited to those that participate in Medicare and Medicaid, which test human specimens for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment, or the assessment of health, of human beings.

The regulations require laboratories conducting moderate or high-complexity testing to enroll in an HHS-approved proficiency testing (PT) program that covers all of the specialties and subspecialties for which the laboratory is certified and all analyses listed in Subpart I of the CLIA regulations. As of June 2013, there were 239,922 CLIA certified laboratories. Of these laboratories, 35,035 are required to enroll in an HHS-approved PT program and are subject to all PT regulations.

Congress emphasized the importance of PT when it drafted the CLIA legislation. For example, in discussing their motivation in enacting CLIA, the Committee on Energy and Commerce noted that it “focused particularly on proficiency testing because it is considered one of the best measures of laboratory performance” and that proficiency testing “is arguably the most important measure, since it reviews actual test results rather than merely gauging the potential for good results.” (See H.R. Rep. No. 100–899, at 15 (1988).) The Committee surmised that, left to their own devices, some laboratories would be inclined to treat PT samples differently than their patient specimens, as they would know that the laboratory would be judged based on its performance in analyzing those samples. For example, such laboratories might be expected to perform repeated tests on the PT sample, use more highly qualified personnel than are routinely used for such testing, or send the samples out to another laboratory for analysis. As such practices would undermine the purpose of PT, the Committee noted that the CLIA statute was drafted to bar laboratories from such practices, and to impose significant penalties on those who elect to violate those bars (H.R. Rep. No. 100–899, at 16 and 24 (1988)).

PT is a valuable tool the laboratory can use to verify the accuracy and

reliability of its testing. During PT, an HHS-approved PT program sends samples to be tested by a laboratory on a scheduled basis. After testing the PT samples, the laboratory reports its results back to the PT program for scoring. Review and analysis of PT reports by the laboratory director will alert the director to areas of testing that are not performing as expected and may also indicate subtle shifts or trends that, over time, could affect patient results. As there is no on-site, external proctor for PT testing in a laboratory, the testing relies in large part on an honor system. The PT program places heavy reliance on each laboratory and laboratory director to self-police their analysis of PT samples to ensure that the testing is performed in accordance with the CLIA requirements. For each PT event, laboratories are required to attest that PT samples are tested in the same manner as patient specimens are tested. PT samples are to be assessed by integrating them into the laboratory's routine patient workload, and the testing itself is to be conducted by the personnel who routinely perform such testing, using the laboratory's routine methods. The laboratory is barred from engaging in interlaboratory communication pertaining to results prior to the PT program's event cut-off date and must not send the PT samples or any portion of the PT samples to another laboratory for testing, even if it would normally send a patient specimen to another laboratory for testing.

Any laboratory that intentionally refers its PT samples to another laboratory for analysis risks having its certification revoked for at least 1 year, in which case, any owner or operator of the laboratory risks being prohibited from owning or operating another laboratory for 2 years (42 CFR 493.1840(a)(8), (b)). The phrase "intentionally referred" has not been defined by the statute or regulations, but we have consistently interpreted this phrase from the onset of the program to mean general intent, as in intention to act. Whether or not acts are authorized or even known by the laboratory's management, a laboratory is responsible for the acts of its employees. Among other things, laboratories need to have procedures in place and train employees on those procedures to prevent staff from forwarding PT samples to other laboratories even in instances in which they would normally forward a patient specimen for testing.

In the February 7, 2013 **Federal Register** (78 FR 9216), we published a proposed rule titled Part II—Regulatory Provisions to Promote Program

Efficiency, Transparency and Burden Reduction (hereafter referred to as the Burden Reduction proposed rule) to propose reforms to the Medicare and CLIA regulations that we had identified as unnecessary, obsolete, or excessively burdensome. In that rule, we proposed changes to the CLIA PT regulations to establish policies under which certain PT referrals by laboratories would generally not be subject to revocation of their CLIA certificate or a 2 year prohibition on laboratory ownership or operation. To do this, we proposed a narrow exception in our longstanding interpretation of what constitutes an "intentional" PT referral.

While that proposed rule was under development but before its publication, Congress enacted the "Taking Essential Steps for Testing Act of 2012" (Pub. L. 112–202, the "TEST Act") on December 4, 2012. The TEST Act amended section 353 of the PHS Act to provide the Secretary with discretion as to which sanctions she would apply to cases of intentional PT referral.

In the Burden Reduction proposed rule (78 FR 9216), we stated that we would address the TEST Act in future rulemaking, except that to comply with the TEST Act and begin to align the CLIA regulations with the amended CLIA statute, we proposed to revise the second sentence of § 493.801(b)(4) to state that a laboratory may (as opposed to "must") have its CLIA certification revoked when CMS determines PT samples were intentionally referred to another laboratory.

The regulatory changes that we are now proposing would add the remaining policies and regulatory changes needed to fully implement the TEST Act.

### *B. Proposed Changes*

As noted earlier, the TEST Act provided the Secretary with the discretion to substitute intermediate sanctions in lieu of the 2 year prohibition on the owner and operator when a CLIA certificate is revoked due to intentional PT referral, and to consider imposing alternative sanctions in lieu of revocation in such cases as well. The TEST Act provides the Secretary with the opportunity to frame policies that will achieve a better correlation between the nature and extent of intentional PT referrals at a given laboratory, and the scope and type of sanctions or corrective actions that are imposed on that laboratory and its owners and operators, as well as any consequences to other laboratories owned or operated by those owners and operators.

We are proposing to divide the sanctions for PT referral into three categories based on severity and extent of the referrals. The first category is for the most serious, egregious violations, encompassing cases of repeat PT referral or cases where a laboratory reports another laboratory's test results as its own. In such cases, we do not believe that alternative sanctions would be appropriate. Therefore, we are proposing to revoke the CLIA certificate for at least 1 year in instances in which a laboratory has a repeat proficiency testing referral, ban the owner and operator from owning or operating a CLIA-certified laboratory for at least 1 year, and may also impose a civil monetary penalty (CMP). In keeping with the February 7, 2013 proposed rule (78 FR 9216), we propose to define, at § 493.2, "a repeat proficiency testing referral" as "a second instance in which a proficiency testing sample, or a portion of a sample, is referred, for any reason, to another laboratory for analysis prior to the laboratory's proficiency testing program event cut-off date within the period of time encompassing the two prior survey cycles (including initial certification, recertification, or the equivalent for laboratories surveyed by an approved accreditation organization)." We believe that a repeat PT referral warrants revocation of a laboratory's CLIA certificate for at least 1 year because such laboratories have already been given opportunity to review their policies, correct their deficiencies and adhere to regulations, and adherence to the laboratory's established policy, and ensure effective training of their personnel. As there is no on-site, external proctor for PT testing in a laboratory, the testing relies in large part on an honor system. Therefore, when a PT referral has previously occurred prior to the event cut-off date within the two prior survey cycles, we do not believe that laboratories should be given additional opportunities to ensure that they are meeting the CLIA PT requirements and believe that revocation of the CLIA certificate should consequently occur. We also propose, in the first category, that the CLIA certificate be revoked, and the owner and operator banned from owning or operating a CLIA-certified laboratory for at least 1 year, in cases where the PT sample was referred to another laboratory, the referring laboratory received the results from the other laboratory, and the referring laboratory reported to the PT program the other laboratory's results on or before the event cut-off date. We note that PT

programs place heavy reliance on each laboratory and laboratory director to self-police their analysis of PT samples to ensure that the testing is performed in accordance with the CLIA requirements. PT performance and scores must reflect an individual laboratory's performance, and as such, reporting results from another laboratory is deceptive to the public. We believe these two scenarios are the most egregious forms of PT referral and merit the most severe sanctions.

For example, a laboratory may have two distinct sites, Laboratory A and Laboratory B, that operate under different CLIA numbers, where Laboratory A has received PT samples to be tested as part of their enrollment in PT as required by the CLIA regulations. If Laboratory A were to refer PT samples to Laboratory B, receive test results back at Laboratory A from Laboratory B prior to the event cutoff date, and report to the PT program those results obtained from Laboratory B, the scores for the PT event would not reflect the performance of Laboratory A, but rather the performance of Laboratory B. Since the PT scores would actually be reflective of the accuracy and reliability at Laboratory B rather than A, the purpose of the proficiency testing would be undermined. Further, as stated in the CLIA regulations at § 493.801(4)(ii), the laboratory must make PT results available to the public. In this scenario, any member of the public who sought to use the reported PT scores to select a high-quality laboratory would be deceived by the scores for the results submitted to the PT program, as they would expect that they were provided information about the performance of Laboratory B when that would not be the case.

In cases of PT referral where the CLIA certificate is revoked, the TEST Act provides the Secretary with discretion to ban the owner and operator from owning or operating a CLIA-certified laboratory for less than 2 years. Prior to the TEST Act, revocation of a CLIA certificate for PT violation always triggered a 2-year ban on the owner and operator. We are also proposing that the laboratory owner and operator would be banned from owning or operating a CLIA-certified laboratory for at least 1 year for any violation within the first category involving the revocation of a CLIA certificate.

We believe that a second category of sanctions should be applied to certain PT referral situations in which the CLIA certificate would be suspended or limited (rather than revoked), in combination with alternative sanctions. We propose to use this approach in

those instances in which a laboratory refers PT samples to a laboratory that operates under a different CLIA number before the PT event close date and, while the laboratory reports its own results to the PT program, it receives results from the second laboratory prior to the event close date. Such a referral situation would allow the referring laboratory an opportunity to confirm, check, or change its results prior to reporting its results to the PT program. If, upon investigation, surveyors determine that the referral does not constitute a repeat PT referral, we propose to suspend or limit the CLIA certificate for less than 1 year rather than revoke the CLIA certificate, and propose that we also impose alternative sanctions (as an alternative to revocation of the CLIA certificate). Further, an alternative sanction would always include required training of staff.

A suspension of the CLIA certificate means that no testing of human specimens for health care purposes may be performed by that laboratory during the period of suspension. In such cases, the owner or operator typically contracts out for laboratory services, or contracts with another operator to operate the laboratory under the contracted laboratory's CLIA certificate. In contrast to revocation of the CLIA certificate and its accompanying ban on the owner and operator, suspension usually applies only to the individual laboratory in question rather than all laboratories that are under the control of the owner or operator.

A limitation of the CLIA certificate means that the laboratory is not permitted to perform testing or to bill Medicare or Medicaid for laboratory work in the specialty or subspecialty that has been limited, but may continue to conduct all other testing under its own CLIA certificate.

In determining whether to suspend or limit the CLIA certificate, we propose to apply the criteria of § 493.1804(d). For example, we would examine the extent of the PT referral practice as well as its duration. We propose that if surveyors determine that in the prior two survey cycles there were prior PT referrals that occurred but were not cited by CMS, then the CLIA certificate would always be suspended rather than just limited. The duration of the suspension would reflect the number of samples referred, the period of time the referrals had been occurring, the extent of the practice, and other criteria specified at § 493.1804(d).

Further, for cases in the second category we propose that when the certificate is suspended or limited, alternative sanctions would be applied in addition to the principal sanctions of

suspension or limitation. We propose that, at a minimum, the alternative sanctions would include a CMP to be determined using the criteria set forth in § 493.1834, as well as a directed plan of correction. Additionally, if the CLIA certificate is suspended, we propose to also impose state on-site monitoring of the laboratory.

We believe that a third category of sanctions should be applied to those PT referral scenarios in which the referring laboratory does not receive test results prior to the event cut-off date from another laboratory as a result of the PT referral. We propose that in such scenarios, at a minimum, the laboratory will always be required to pay a CMP as calculated according to § 493.1834, as well as comply with a directed plan of correction. A directed plan of correction would always include training of staff.

For example, a laboratory may place PT samples in an area where other patient specimens are picked up by courier to take to a reference laboratory. The reference laboratory courier may take the PT samples along with the patients' specimens. The laboratory personnel notice that the PT samples are missing and contact the reference laboratory to inquire if they have received the PT samples along with the patients' specimens. The reference laboratory is instructed to discard the PT samples and not test them since they were picked up in error. In this case, the "referring" laboratory realized the error, contacted the receiving laboratory, and did not receive results back for any of the PT samples. In this scenario, we propose to impose only alternative sanctions. We welcome comments about other scenarios in which you believe lesser sanctions may also be appropriate.

In determining whether to impose alternative sanctions, we propose to rely on the existing considerations at § 493.1804(c) and (d), § 493.1806(c), § 493.1807(b), § 493.1809 and, in the case of civil money penalties, § 493.1834(d). These current regulations have proven effective as enforcement measures over time for CLIA noncompliance for all circumstances other than PT referral. We therefore believe these same criteria will be effective in the imposition of alternative sanctions for PT referral cases.

In summary, we propose to amend § 493.1840 by revising paragraph (b) to specify three categories for the imposition of sanctions for PT referrals. We believe these provisions, as amended, would provide the necessary detail to fairly and uniformly apply the discretion granted to the Secretary under the TEST Act, without being so

specific as to defeat the intent to provide appropriate flexibility when taking punitive or remedial action in the context of a PT referral finding.

We also propose to make three conforming changes to the CLIA regulations at the authority citation for Part 493 and at § 493.1 and § 493.1800(a)(2) to include references to the Public Health Service Act as amended by the TEST Act.

We invite the public to comment on our proposed categorization of potential PT referral situations, the criteria we propose for assessing the scope and severity of any violation, and the types of sanctions that correspond to each category.

## V. Other Required Information

### A. Requests for Data From the Public

Commenters can gain access to summarized FQHC data on an expedited basis by downloading the files listed in this section, which are available on the Internet without charge. For detailed claims data, requestors would follow the current research request process which can be found on the Research Data Assistance Center (ResDAC) Web site at <http://www.resdac.org/>.

1. FQHC Summary Data. This file contains data summarized by CCN, which can be used to model the proposed methodology and calculate projected payments and impacts under the proposed PPS. The data file is available at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/FQHCPPS/index.html>.

2. FQHC Proposed GAFs. This file contains the listed of proposed GAFs by locality, as published in Addendum A of this proposed rule. The data file is available at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/FQHCPPS/index.html>.

3. HCRIS Cost Report Data. The data included in this file was reported on Form CMS-222-92. The dataset includes only the most current version of each cost report filed with CMS and includes cost reports with fiscal year ending dates on or after September 30, 2009. HCRIS updates this file on a quarterly basis. The data file is available at <http://www.cms.gov/Research-Statistics-Data-and-Systems/Files-for-Order/CostReports/HealthClinic.html>.

### B. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management

and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on the information collection requirements (ICRs) regarding the proposed FQHC rates and adjustments in § 405.2470.

Section II. of this proposed rule discusses the data that are used in computing the FQHS PPS rates and adjustments. As discussed, the data are derived from the RHC/FQHC cost report form CMS-222-92, and claims form UB-04 CMS 1450 (per CMS Pub. 100-04, Medicare Claims Processing Manual, Chapter 1). The reporting requirements for FQHCs are in § 405.2470 of the Medicare regulations. We note that, while the preamble does not contain any new ICRs, there is currently an OMB approved information collection request associated with the RHC/FQHC cost report. The OMB control number is 0938-0107, with an expiration date of August 31, 2014.

If you comment on this information collection and recordkeeping requirement, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, [CMS-1443-P] Fax: (202) 395-6974; or Email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov).

## VI. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

## VII. Regulatory Impact Analysis

### A. Statement of Need

This proposed rule is necessary to establish a methodology and payment rates for a PPS for FQHC services under Medicare Part B beginning on October 1, 2014, in compliance with the statutory requirements of section 10501(i)(3)(A) of the Affordable Care Act. This proposed rule also is necessary to make—(1) contracting changes for RHCs; (2) conforming changes to other policies related to FQHCs and RHCs; (3) changes to enforcement actions for improper proficiency testing referrals.

### B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104-4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule: (having an annual effect on the economy of \$100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as “economically significant”); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100

million or more in any 1 year). This proposed rule is an economically significant rule because we estimate that the FQHC PPS will increase payments to FQHCs by more than \$100 million in 1 year. We believe that this regulation would not have a significant financial impact on RHCs. We estimate that this rulemaking is “economically significant” as measured by the \$100 million threshold, and hence also a major rule under the Congressional Review Act. Accordingly, we have prepared a RIA that, to the best of our ability, presents the costs and benefits of the rulemaking.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government jurisdictions. All RHCs and FQHCs are considered to be small entities. The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business (having revenues of less than \$7.0 million to \$35.5 million in any 1 year). The provisions in this proposed rule have an average of 30 percent increase in Medicare PPS payment to FQHCs and no financial impact on RHCs. Individuals and states are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. As its measure of significant economic impact on a substantial number of small entities, HHS uses a change in revenue of more than 3 to 5 percent. We are not preparing an analysis for section 1102(b) of the Act, because we have determined that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2013, that is approximately \$141 million. This proposed rule does not include any

mandates that would impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector, that would exceed the threshold of \$141 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on state and local governments, preempts state law, or otherwise has Federalism implications. This proposed rule would not have a substantial effect on state and local governments, preempt state law, or otherwise have Federalism implications.

This proposed regulation is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.) and has been transmitted to the Congress and the Comptroller General for review.

### C. Limitations of Our Analysis

Our quantitative analysis presents the projected effects of our proposed policy changes, as well as statutory changes effective on FQHCs for cost reporting periods beginning on or after October 1, 2014. We estimated the effects of individual proposed policy changes by estimating payments per visit while holding all other payment policies constant. We use the best data available, but, generally, we do not attempt to make adjustments for future changes in such variables as the number of visits or the prevalence of new patients or comprehensive initial Medicare visits furnished to Medicare beneficiaries. To the extent that there are changes in the volume and mix of services furnished by FQHCs, the actual impact on total Medicare revenues will be different from those shown in Table 2 (Impact of the PPS on Payments to FQHCs).

### D. Anticipated Effects of the FQHC PPS

#### 1. Effects on FQHCs

As required by section 1834(o)(2)(B)(i) of the Act, initial payments (Medicare and coinsurance) under the FQHC PPS must equal 100 percent of the estimated amount of reasonable costs, as determined without the application of the current system's UPLs or productivity standards that can reduce a FQHC's per visit rate. As discussed in sections I and II. of this proposed rule, we propose to pay FQHCs a single encounter-based rate per beneficiary per day, adjusting for geographic differences in the cost of inputs by applying an adaptation of the GPCI used to adjust payment under the PFS, and further adjusting the encounter-based rate when

a FQHC furnishes care to a patient that is new to the FQHC or to a beneficiary receiving a comprehensive initial Medicare visit (that is, an IPPE or an initial AWW).

Based on comparisons of the proposed PPS rate to the AIRs (as listed on the FQHC cost reports), the proposed FQHC PPS is estimated to have an overall impact of increasing total Medicare payments to FQHCs by approximately 30 percent. The FQHC PPS is effective for cost reports beginning on or after October 1, 2014. This impact is fully implemented when all FQHCs are paid under the FQHC PPS and reflects the additional payment rate update based on the MEI for all of 2015 (fiscal year through the end of the calendar year). (See section II.E. of this proposed rule for a discussion of the use of the MEI update to calculate the first year's base payment amount under the FQHC PPS.)

Table 2 shows the impact on cost reporting entities and their associated delivery sites of the fully implemented proposed FQHC PPS payments compared to current payments to FQHCs. The analysis is based on cost reports from freestanding FQHCs with cost reporting periods ending between June 30, 2011, and June 30, 2012. A FQHC with multiple sites has the option of filing a consolidated cost report, and this sample reflects 1,141 cost reporting entities that represent 3,509 delivery sites. The following is an explanation of the information represented in Table 2:

- Column A (Number of cost-reporting entities): This column shows the number of cost-reporting entities for each impact category. Urban/rural status and census division were determined based on the geographic location of the cost reporting entity. Categories for Medicare volume were defined from cost report data, based on tertiles for the percent of total visits that were identified as Medicare visits. Categories for total volume were defined from cost report data, based on tertiles for the total number of visits for each cost reporting entity.

- Column B (Number of delivery sites): This column shows the number of delivery sites associated with the cost reporting entities in each impact category. (Note that delivery sites that are part of a consolidated cost reporting entity might not fall into the same impact category if considered individually. For example, a cost reporting entity could include delivery sites in multiple census division, and delivery sites were categorized based on the geographic location of the cost reporting entity).

• Column C (Number of Medicare visits): This column shows the number of Medicare visits in the final data set that were used to model payments under the FQHC PPS.

• Column D (Effect of statutorily required changes): This column shows the estimated fully implemented combined impact on payments to FQHCs of changes to the payment structure that are required by statute. Removing both the UPL and the productivity screen is estimated to increase total Medicare payments to FQHCs by about 28 percent. The combined impact in column D also reflects the FQHC PPS requirement to calculate payment based on the costs of all FQHCs, rather than on an individual FQHC's costs. We note that the impacts for column D through H reflect the growth in the MEI from July 1, 2012 through September 30, 2014, prior to the application of the forecasted MEI update for the 15-month period of October 1, 2014 through December 31, 2015.

• Columns E through H (Effects of the Proposed Adjustments to the Average Cost per Visit): These columns show the estimated fully implemented impacts on Medicare payments to FQHCs due to the proposed policy changes. In developing the Medicare FQHC PPS, section 10501(i)(3)(A) of the Affordable Care Act requires CMS to take into account the type, intensity, and duration of FQHC services, and allows other

adjustments, such as geographic adjustments. As discussed in section II.C of this proposed rule, the cost report data are insufficient for modeling these types of adjustments, and we propose to use the HCPCS codes in the FQHC claims data to support the development of the FQHC PPS rate and adjustments and for making payment under the PPS. As demonstrated in columns E–H, the overall effect of these various adjustments is budget neutral.

• Column E (Effect of daily visit (per diem) rate): This column shows the estimated fully implemented impact on payments to FQHCs of the proposal to pay a single encounter-based rate per beneficiary per day, which eliminates the current exceptions that pay for more than one visit per beneficiary per day. As it is uncommon for FQHCs to bill more than one visit per day for the same beneficiary (less than 0.5 percent of visits), this adjustment would have minimal effect on most FQHCs.

• Column F (Effect of new patient/initial visit adjustment): This column shows the estimated fully implemented impact on payments to FQHCs of the proposal to adjust the encounter-based rate by 1.3333 when a FQHC furnished care to a patient that was new to the FQHC or to a beneficiary receiving a comprehensive initial Medicare visit. As new patients and initial Medicare visits accounted for approximately 3 percent of all FQHC visits, this adjustment

would have limited reduction on the base encounter rate, after application of budget neutrality, and a limited redistribution effect among FQHCs.

• Column G (Effect of the GAF): This column shows the estimated fully implemented impact on payments to FQHCs of the proposal to adjust payments for geographic differences in costs by applying an adaptation of the GPCIs used to adjust payment for physician work and practice expense under the PFS.

• Column H (Combined effect of all PPS adjustments): This column shows the estimated fully implemented impact on payments to FQHCs of the proposed adjustments in columns E through G. Both the individual and combined effects of these adjustments on overall Medicare payment to FQHCs would be zero percent as the effects of these adjustments would be redistributive and would not change Medicare payments in the aggregate.

• Column I (Combined effect of all policy changes and MEI adjustment): This column shows the estimated fully implemented impact on payments to FQHCs of removing the UPL and productivity screen in Column D, the adjustments to the PPS rates in the preceding columns, and the application of the forecasted MEI update for the 15-month period of October 1, 2014 through December 31, 2015.

TABLE 2—IMPACT OF THE PPS ON PAYMENTS TO FQHCs

|                                     | Number of<br>cost-reporting<br>entities | Number of<br>delivery<br>sites | Number of<br>Medicare<br>visits | Effect of<br>statutorily<br>required<br>changes<br>(percent) | Effect of<br>daily visit<br>(per diem)<br>rate<br>(percent) | Effect of<br>new patient/<br>initial visit<br>adjustment<br>(percent) | Effect of<br>geographic<br>adjustment<br>factor<br>(GAF)<br>(percent) | Combined<br>effect of all<br>PPS<br>adjustments<br>(percent) | Combined<br>effect of all<br>policy<br>changes<br>and MEI<br>adjustment<br>(percent) |
|-------------------------------------|---|--------------------------------|---------------------------------|--|---|---|---|--|--|
|                                     | (A)                                     | (B)                            | (C)                             | (D)  | (E)   | (F)   | (G)   | (H)  | (I)  |
| All FQHCs .....                     | 1,141                                   | 3,509                          | 5,245,961                       | 28.0   | 0.0   | 0.0   | 0.0   | 0.0  | 30.2   |
| Urban/rural Status:                 |   |                                |                                 |  |   |   |   |  |  |
| Urban .....                         | 647                                     | 1,756                          | 2,518,395                       | 21.8   | −0.2  | 0.0   | 3.1   | 3.0  | 27.6   |
| Rural .....                         | 348                                     | 820                            | 1,385,116                       | 39.3   | 0.2   | −0.9  | −3.1  | −3.0   | 37.4   |
| Mixed rural-urban .....             | 146                                     | 933                            | 1,342,450                       | 29.6   | 0.2   | 0.0   | −2.7  | −2.5   | 28.5   |
| Medicare Volume:                    |   |                                |                                 |  |   |   |   |  |  |
| Low (<6.9% of total visits)         | 380                                     | 1,039                          | 851,771                         | 22.6   | −0.1  | 0.2   | 3.3   | 3.4  | 28.9   |
| Medium (6.9%–13.2% of total visits) | 381                                     | 1,235                          | 1,751,498                       | 25.5   | −0.1  | 0.1   | 0.0   | 0.5  | 28.2   |
| High (>13.2% of total visits)       | 380                                     | 1,237                          | 2,642,692                       | 31.7   | 0.1   | −0.2  | −1.3  | −1.4   | 32.0   |
| Total Volume:                       |   |                                |                                 |  |   |   |   |  |  |
| Low (<17,340 total visits)          | 380                                     | 502                            | 426,346                         | 31.8   | 0.0   | 0.1   | −0.1  | 0.0  | 34.1   |
| Medium (17,340–42,711 total visits) | 381                                     | 903                            | 1,253,817                       | 29.6   | 0.0   | 0.1   | −1.6  | −1.5   | 29.8   |
| High (>42,711 total visits)         | 380                                     | 2,123                          | 3,565,798                       | 27.1   | 0.0   | −0.1  | 0.6   | 0.5  | 29.9   |
| Census Division:                    |   |                                |                                 |  |   |   |   |  |  |
| New England .....                   | 92                                      | 236                            | 657,794                         | 25.7   | −0.4  | −0.2  | 1.8   | 1.2  | 29.3   |
| Middle Atlantic .....               | 108                                     | 314                            | 457,798                         | 23.1   | 0.1   | 0.0   | 3.1   | 3.2  | 29.1   |
| East North Central .....            | 143                                     | 460                            | 603,034                         | 29.2   | −0.2  | 0.1   | −2.7  | −2.7   | 27.7   |
| West North Central .....            | 78                                      | 201                            | 248,891                         | 29.2   | 0.0   | 0.1   | −5.1  | −5.1   | 24.6   |
| South Atlantic .....                | 187                                     | 688                            | 1,049,755                       | 31.0   | 0.2   | 0.0   | −3.0  | −2.9   | 29.3   |
| East South Central .....            | 83                                      | 317                            | 374,386                         | 36.1   | 0.1   | 0.0   | −6.8  | −6.7   | 29.2   |
| West South Central .....            | 107                                     | 287                            | 337,375                         | 29.4   | 0.1   | 0.2   | −5.3  | −5.0   | 25.0   |
| Mountain .....                      | 87                                      | 311                            | 368,666                         | 29.2   | −0.1  | 0.3   | −2.1  | −1.9   | 28.9   |
| Pacific .....                       | 252                                     | 690                            | 1,145,897                       | 24.8   | 0.1   | −0.1  | 7.5   | 7.5  | 36.4   |
| US Territories .....                | 4                                       | 5                              | 2,365                           | 36.7   | 0.4   | 1.1   | −0.5  | 1.0  | 41.2   |

## 2. Effects on RHCs

While we expect that removing the restriction on contracting will result in cost savings for RHCs that employ an NP or PA and will no longer need to conduct employment searches to meet their additional staffing needs, the financial impact on RHCs is expected be small and cannot be quantified.

There is no Medicare impact on RHCs as a result of the implementation of the FQHC PPS.

## 3. Effects on Other Providers and Suppliers

There would be no financial impact on other providers or suppliers as a result of the implementation of the FQHC PPS.

## 4. Effects on the Medicare and Medicaid Programs

We estimate that annual Medicare spending for FQHCs during the first 5 years of implementation would increase as follows:

**TABLE 3—ESTIMATED INCREASE IN ANNUAL MEDICARE PAYMENTS TO FQHCs**

| Calendar year | Estimated increase in payments (\$ in millions) |
|---------------|---|
| 2014 .....    | 33  |
| 2015 .....    | 204   |
| 2016 .....    | 226   |
| 2017 .....    | 236   |
| 2018 .....    | 248   |

We intend for estimated aggregate payments under the proposed FQHC PPS to equal 100 percent of the estimated amount of reasonable costs, as determined without the application of the current system's UPLs or productivity standards. We note that the estimated increase in payments for CY 2014 is significantly smaller than for subsequent years, primarily due to the implementation date of October 1, 2014, which will affect payments for only 3 months of CY 2014. In addition, an analysis of 2010 cost reporting data indicates that approximately 6 percent of FQHC cost reporting entities had cost reporting periods that began between October 1 and December 31, which indicates that we would expect a small percentage of cost reporting entities to be paid under the FQHC PPS between October 1, 2014 and December 31, 2014.

After the first year of implementation, the PPS payment rates must be increased by the percentage increase in the MEI. After the second year of implementation, PPS rates shall be increased by the percentage increase in

a market basket of FQHC goods and services as established through regulations, or, if not available, the MEI. While we will consider the merits of estimating a FQHC market basket for use in base payment updates after the second year of the PPS, payment estimates were updated annually by the MEI for purposes of this analysis.

There is no financial impact on the Medicaid program as a result of the implementation of the Medicare FQHC PPS.

## 5. Effects on Medicare Beneficiaries

FQHC PPS: As discussed in section II.E. of this proposed rule, we propose that coinsurance under the FQHC PPS would be 20 percent of the lesser of the FQHC's charge or the PPS rate. Under the current reasonable cost payment system, beneficiary coinsurance for FQHC services is assessed based on the FQHC's charge, which can be more than coinsurance based on the AIR. An analysis of a sample of FQHC claims data for dates of service between January 1, 2011 through June 30, 2012 indicated that beneficiary coinsurance based on 20 percent of the FQHC's charges was approximately \$23 million higher, or 18 percent more, than if coinsurance had been assessed based on 20 percent of the lesser of the FQHC's charge or the applicable all-inclusive rate.

Based on comparisons of the proposed PPS rate to the AIRs, the proposed FQHC PPS is estimated to have an overall impact of increasing total Medicare payments to FQHCs by approximately 30 percent. This overall 30 percent increase translates to a 30 percent increase to beneficiary coinsurance if it were currently assessed based on the FQHC's AIR and if, under the PPS, it would always be assessed based on the PPS rate. Because the charge structure among FQHCs varies, and beneficiary liability for the same mix of FQHC services could differ significantly based on the differences in charge structures, we have insufficient data to estimate the change to beneficiary coinsurance due to the FQHC PPS.

## E. Effects of Other Policy Changes

### 1. Effects of Policy Changes for FQHC's and RHC's

#### a. Effects of RHC Contracting Changes

In section III.A. of this proposed rule we discuss our proposal to remove the restrictions on RHCs contracting with nonphysician practitioners when the statutory requirement to employ an NP or a PA is met would provide RHCs with greater flexibility in meeting their

staffing requirements. The ability to contract with NPs, PAs, CNMs, CP, and CSWs would provide RHCs with additional flexibility with respect to recruiting and retaining non-physician practitioners, which may result in increasing access to care in rural areas. There is no cost to the Federal government and we cannot estimate a cost savings for RHCs.

#### b. Effects of the FQHC and RHC Conforming Changes

In section III.B. of this proposed rule, we present our proposals regarding clarifying, technical, conforming changes to the FQHC and RHC regulations that are necessary for implementation of the FQHC PPS. We believe that are no costs associated with these changes.

### 2. Effects of CLIA Changes for Enforcement Actions for Proficiency Testing Referral

As discussed in section IV. of this proposed rule, we would make a number of clarifications and changes pertaining to the regulations governing adverse actions for PT referral under CLIA to ensure conformance between the TEST Act and our regulations. The TEST Act provides the Secretary with the discretion to apply alternative sanctions in lieu of potential principal sanctions in cases of intentional PT referral. Alternative sanctions may include any combination of civil money penalties, directed plan of correction (such as required remedial training of staff), temporary suspension of Medicare or Medicaid payments, or state onsite monitoring. From 2007 through 2011 there were 41 cases of cited, intentional PT referral. Of these 41 cases (averaging 8 per year), we estimate that 28 (or 6 per year on average) may have fit the terms of this rule to have alternative sanctions applied. Based on discussions with the most recently affected laboratories that were cited for PT violations, we estimate that the average cost of the sanctions applicable under current regulations is approximately \$578,400 per laboratory. The largest single type of cost is the expense to the laboratory or hospital to contract out for management of the laboratory, and to pay laboratory director fees, due to the 2-year ban that prohibits the owner and operator from owning or operating a CLIA-certified laboratory in accordance with revocation of the CLIA certificate. We have not included legal expenses in this cost estimate, as it is not possible to estimate the extent to which laboratories may still appeal the imposition of the alternative sanctions in this proposed

rule. If the expense of alternative sanctions averaged \$150,000 per laboratory, we estimate the annual fiscal savings of the changes to average \$2.6 million (\$578,400 minus \$150,000 for 6 laboratories). While the total savings may not be large, the savings to the individual laboratory or hospital that is affected can be significant. However, we note that the \$2.6 million estimate may overstate or understate the provision's savings to laboratories. For example, if under current regulations the prior management is fired instead of being reassigned to other duties for the 2-year period, some of the costs of paying for the new management's salaries, benefits and training may be able to be drawn from funding that had previously been earmarked to pay those expenses for their predecessors. That is, the costs associated with the new employee could be offset by the savings gained when the former employee is terminated. Any such offset will result in lower savings than is estimated earlier. However, there

are also unknowns that may result in larger savings than estimated earlier. For example, we have no data on whether terminated management historically received severance packages. If they did, those savings would have to be added to the savings we noted earlier. Such changes in severance payments would represent transfer effects of the proposed rule, rather than net social costs or benefits. In general, it is only to the extent that new laboratory directors put forth more effort than temporarily-banned laboratory directors (due, for example, to the need to familiarize themselves with laboratories they have not previously operated) or that support staff put forth more effort to make the new management arrangements than they would addressing alternative sanctions that society's resources would be freed for other uses by the proposed provision; thus, a comprehensive estimate of laboratory savings would represent some combination of transfers and net social benefits. While we

recognize these potential inaccuracies in our estimates, we lack data to account for these considerations.

#### F. Alternatives Considered

This proposed rule contains a range of policies, including some provisions related to specific statutory provisions. The preceding sections of this proposed rule provide descriptions of the statutory provisions that are addressed, identifies those policies when discretion has been exercised, presents rationale for our final policies and, where relevant, alternatives that were considered.

#### G. Accounting Statement and Table

As required by OMB Circular A-4 (available at [http://www.whitehouse.gov/omb/circulars\\_a004\\_a-4/](http://www.whitehouse.gov/omb/circulars_a004_a-4/)), we have prepared an accounting statement table showing the classification of the impacts associated with implementation of this proposed rule.

TABLE 4—ACCOUNTING STATEMENT—CLASSIFICATION OF PROPOSED ESTIMATED EXPENDITURES UNDER THE FQHC PPS

| Category   | Estimates   | Units       |                         |                |
|--|---|-------------|-------------------------|----------------|
|  |   | Year dollar | Discount rate (percent) | Period covered |
| Transfers:   |   |             |                         |                |
| Federal Annualized Monetized Transfers (in millions) ..... | 183   | 2014        | 7                       | 2014–2018      |
|  | 187   | 2014        | 3                       | 2014–2018      |
| From Whom to Whom .....                                    | Federal Government to FQHCs that receive payments under Medicare. |             |                         |                |

#### H. Conclusion

The previous analysis, together with the remainder of this preamble, provides an initial Regulatory Flexibility Analysis. The previous analysis, together with the remainder of this preamble, provides a Regulatory Impact Analysis.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

#### List of Subjects

##### 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medical devices, Medicare reporting and recordkeeping requirements, Rural areas and X-rays.

##### 42 CFR Part 491

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements, Rural areas.

##### 42 CFR Part 493

Administrative practice and procedure, Grant programs—health, Health facilities, Laboratories, Medicaid, Medicare, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR parts 405, 491, and 493 as set forth below:

#### PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

- 1. The authority for citation for part 405 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

- 2. Section 405.2400 is revised to read as follows:

##### § 405.2400 Basis.

Subpart X is based on the provisions of the following sections of the Act: Section 1833—Amounts of payment for

supplementary medical insurance services. Section 1861(aa)—Rural health clinic services and Federally qualified health center services covered by the Medicare program. Section 1834(o)—Federally qualified health center prospective payment system beginning October 1, 2014.

- 3. In § 405.2401, paragraph (b) is amended as follows:

- A. Removing the definition of “Act”.

- B. Revising the definition of “Allowable costs”.

- C. Removing the definition of “Carrier”.

- D. Adding the definitions of “Certified nurse midwife (CNM),” “Clinical psychologist (CP),” and “Clinical social worker (CSW)”.

- E. Revising the definitions of “Coinsurance” and “Deductible”.

- F. Adding the definition of “Employee” and “HRSA.”

- G. Revising paragraphs (1) through (3) of the definition of “Federally qualified health center”.

- H. Removing the definition of “Intermittent nursing care”.

■ I. Adding the definition of “Medicare Administrative Contractor (MAC)”.

■ J. Removing the definitions of “Nurse-midwife”, “Nurse practitioner and physician assistant”, and Part-time nursing care”.

■ K. Adding the definitions of “Physician assistant (PA)” and “Prospective payment system (PPS)”.

■ L. Revising the definitions of “Reporting period” and “Rural health clinic”.

■ M. In the definition of “Visiting nurse services,” removing the phrase “registered nurse” and adding in its place the phrase “registered professional nurse”.

The revisions and additions read as follows:

#### § 405.2401 Scope and definitions.

\* \* \* \* \*

(b) \* \* \*

*Allowable costs* means costs that are incurred by a RHC or FQHC that is authorized to bill based on reasonable costs and are reasonable in amount and proper and necessary for the efficient delivery of RHC and FQHC services.

\* \* \* \* \*

*Certified nurse midwife (CNM)* means an individual who meets the applicable education, training experience and other requirements of § 410.77(a) of this chapter.

*Clinical psychologist (CP)* means an individual who meet the applicable education, training experience and other requirements of § 410.71(d) of this chapter.

*Clinical social worker (CSW)* means an individual who meet the applicable education, training experience and other requirements of § 410.73(a) of this chapter.

\* \* \* \* \*

*Coinsurance* means that portion of the RHC’s charge for covered services or that portion of the FQHC’s charge or PPS rate for covered services for which the beneficiary is liable (in addition to the deductible, where applicable).

\* \* \* \* \*

*Deductible* means the amount incurred by the beneficiary during a calendar year as specified in § 410.160 and § 410.161 of this chapter.

*Employee* means any individual who, under the common law rules that apply in determining the employer-employee relationship (as applied for purposes of section 3121(d)(2) of the Internal Revenue Code of 1986), is considered to be employed by, or an employee of, an entity. (Application of these common law rules is discussed in 20 CFR 404.1007 and 26 CFR 31.3121(d)–1(c).)

*Federally qualified health center (FQHC)* \* \* \*

(1) Is receiving a grant under section 330 of the Public Health Service (PHS) Act, or is receiving funding from such a grant under a contract with a recipient of such a grant and meets the requirements to receive a grant under section 330 of the PHS Act;

(2) Is determined by the HRSA to meet the requirements for receiving such a grant;

(3) Was treated by CMS, for purposes of part B, as a comprehensive federally funded health center as of January 1, 1990; or

\* \* \* \* \*

*HRSA* means the Health Resources and Services Administration.

\* \* \* \* \*

*Medicare Administrative Contractor (MAC)* means an organization that has a contract with the Secretary to administer the benefits covered by this subpart.

*Nurse practitioner (NP)* means individuals who meet the applicable education, training experience and other requirements of § 410.75(b) of this chapter.

\* \* \* \* \*

*Physician assistant (PA)* means an individual who meet the applicable education, training experience and other requirements of § 410.74(c) of this chapter.

*Prospective payment system (PPS)* means a method of payment in which Medicare payment is made based on a predetermined, fixed amount.

*Reporting period* generally means a period of 12 consecutive months specified by the MAC as the period for which a RHC or FQHC must report required costs and utilization information. The first and last reporting periods may be less than 12 months.

*Rural health clinic* means a facility that has—

(1) Been determined by the Secretary to meet the requirements of section 1861(aa)(2) of the Act and part 491 of this chapter concerning RHC services and conditions for approval; and

(2) Filed an agreement with CMS that meets the requirements in § 405.2402 to provide RHC services under Medicare.

\* \* \* \* \*

■ 4. Section 405.2402 is amended as follows:

■ A. Revising the section heading.

■ B. Revising paragraphs (b) introductory text and (c) introductory text.

■ C. Revising paragraph (d).

■ D. Revising paragraph (e).

■ E. Redesignating paragraph (f) as paragraph (e).

■ F. Revising newly redesignated paragraph (e).

The revisions read as follows:

#### § 405.2402 Rural health clinic basic requirements.

\* \* \* \* \*

(b) *Acceptance of the clinic as qualified to furnish RHC services.* If the Secretary, after reviewing the survey agency or accrediting organization recommendation, as applicable, and other evidence relating to the qualifications of the clinic, determines that the clinic meets the requirements of this subpart and of part 491 of this chapter, the clinic is provided with—

\* \* \* \* \*

(c) *Filing of agreement by the clinic.* If the clinic wishes to participate in the program, it must—

\* \* \* \* \*

(d) *Acceptance by the Secretary.* If the Secretary accepts the agreement filed by the clinic, the Secretary returns to the clinic one copy of the agreement with a notice of acceptance specifying the effective date.

(e) *Appeal rights.* If CMS declines to enter into an agreement or if CMS terminates an agreement, the clinic is entitled to a hearing in accordance with § 498.3(b)(5) and (6) of this chapter.

■ 5. Section 405.2403 is amended as follows:

■ A. Revising the section heading.

■ B. Amending paragraphs (a) introductory text and (a)(2) by removing the term “rural health clinic” and by adding in its place the term “RHC”.

■ C. Amending paragraph (a)(3)(ii)(B) by removing the term “rural health clinic’s” and adding in its place the term “RHC’s”.

■ D. Amending paragraphs (a)(1), (a)(2) introductory text, (a)(3)(i), and (a)(4)(i) and (ii) by removing the term “clinic” and adding in its place the term “RHC”.

The revision reads as follows:

#### § 405.2403 Rural health clinic content and terms of the agreement with the Secretary.

\* \* \* \* \*

■ 6. Section 405.2404 is amended as follows:

■ A. Revising the section heading.

■ B. Amending paragraphs (a) introductory text, (b)(1) introductory text, (b)(2), (b)(3), (c), (e) introductory text, by removing the term “rural health clinic” each time it appears and by adding in its place the term “RHC”.

■ C. Amending paragraph (a)(1), (a)(2)(i), (a)(2)(ii)(A), (a)(3), and (d)(1) by removing the term “clinic” each time it appears and adding in its place the term “RHC”.

■ D. Amending paragraph (a)(2)(i) by removing the term “clinic’s” and adding in its place the term “RHC’s”.

■ E. In paragraph (a)(2)(ii) introductory text, removing the phrase “if he

determines” and adding place “if the Secretary determines”.

■ F. In paragraph (a)(3), removing the phrase “that shall be deemed” and adding in its place the phrase “The Secretary deems it”.

■ G. In paragraph (b)(2), removing the phrase “The Secretary will give” and adding in its place the phrase “The Secretary gives”.

The revisions read as follows:

**§ 405.2404 Termination of rural health clinic agreements.**

\* \* \* \* \*

**§ 405.2410 [Amended]**

■ 7. Section 405.2410 is amended as follows:

■ A. In paragraph (a)(1), removing the term “rural health clinic” and adding in its place the term “RHC”.

■ B. In paragraph (a)(2), removing the term “Federally qualified health center” and adding in its place the term “FQHC”.

■ C. Revising paragraph (b).

The revision reads as follows:

**§ 405.2410 Application of Part B deductible and coinsurance.**

\* \* \* \* \*

(b) *Application of coinsurance.* The beneficiary’s responsibility is based on either of the following:

(1) For RHCs and FQHCs that are not being paid in accordance with section 1834(o) of the Act —

(i) A coinsurance amount that does not exceed 20 percent of the RHC’s or FQHC’s reasonable customary charge for the covered service; and

(ii)(A) For any one item or service furnished by the RHC, a deductible and coinsurance liability that does not exceed twenty percent of a reasonable customary charge by the RHC for that particular item or service; or

(ii) For any one item or service furnished by a FQHC, a coinsurance liability that does not exceed 20 percent of a reasonable customary charge by the FQHC for that particular item or service.

(2) For FQHCs authorized to bill under the PPS, a coinsurance amount which is 20 percent of the lesser of—

(i) The FQHC’s charge; or

(ii) The PPS rate for the covered service.

■ 8. Section 405.2411 is amended as follows:

■ A. Revising paragraph (a) introductory text.

■ B. In paragraphs (a)(1) through (a)(3), removing “;” and adding in its place “.”.

■ C. Revising paragraphs (a)(4) and (5).

■ D. Adding a new paragraph (a)(6).

■ E. Revising paragraph (b).

The revisions and addition read as follows:

**§ 405.2411 Scope of benefits.**

(a) The following RHC services are reimbursable under this subpart:

\* \* \* \* \*

(4) Services and supplies furnished as incident to a nurse practitioner, physician assistant, certified nurse midwife, clinical psychologist, or clinical social worker service.

(5) Visiting nurse services when provided in accordance with 1861(aa)(1) of the Act and § 405.2416.

(6) Clinical psychologists and clinical social worker services as specified in § 405.2450.

(b) Rural health clinic services are—

(1) Covered when furnished in a RHC setting or other outpatient setting, including a patient’s place of residence;

(2) Covered when furnished during a Part A stay in a skilled nursing facility only when provided by a physician, nurse practitioner, physician assistant, certified nurse midwife or clinical psychologist employed or under contract with the RHC at the time the services are furnished; and

(3) Not covered in a hospital as defined in section 1861(e) of the Act; or critical access hospital as defined in 1861(mm)(1) of the Act).

■ 9. Section 405.2412 is revised to read as follows:

**§ 405.2412 Physicians’ services.**

Physicians’ services are professional services that are furnished by either of the following:

(a) By a physician at the RHC or FQHC.

(b) Away from the RHC or FQHC by a physician whose agreement with the RHC or FQHC provides that he or she will be paid by the RHC or FQHC for such services and certification and cost reporting requirements are met.

**§ 405.2413 [Amended]**

■ 10. Section 405.2413 is amended as follows:

■ A. Amending paragraphs (a)(2) and (a)(5) by removing the term “clinic’s” and by adding in its place the term “RHC’s”.

■ B. Amending paragraph (a)(5) by removing the term “clinic” and by adding in its place the term “RHC”.

■ 11. Section 405.2414 is amended as follows:

■ A. Revising paragraphs (a) introductory text and (a)(1).

■ B. In paragraphs (a)(2) and (3), removing “;” and adding in its place “.”.

■ C. Revising paragraph (a)(4).

■ D. In paragraph (a)(5), removing the phrase “They would” and adding in its place the phrase “The services would”.

■ E. In paragraph (c), removing the phrase “physician assistants, nurse midwives or specialized nurse practitioners” and adding in its place the phrase “physician assistants or certified nurse midwives”.

The revisions read as follows:

**§ 405.2414 Nurse practitioner, physician assistant, and certified nurse midwife services.**

(a) Professional services are payable under this subpart if the services meet all of the following:

(1) Furnished by a nurse practitioner, physician assistant, or certified nurse midwife who is employed by, or receives compensation from, the RHC or FQHC.

\* \* \* \* \*

(4) The services are of a type which the nurse practitioner, physician assistant, or certified nurse midwife who furnished the service is legally permitted to perform by the State in which the service is rendered.

■ 12. Section 405.2415 is revised to read as follows:

**§ 405.2415 Services and supplies incident to nurse practitioner, physician assistant, certified nurse midwife, clinical psychologist, or clinical social worker services.**

(a) Services and supplies incident to a nurse practitioner, physician assistant, certified nurse midwife, clinical psychologist, or clinical social worker service are payable under this subpart if the service or supply is all of the following:

(1) Of a type commonly furnished in physicians’ offices.

(2) Of a type commonly rendered either without charge or included in the RHC’s bill.

(3) Furnished as an incidental, although integral part of professional services furnished by a nurse practitioner, physician assistant, certified nurse midwife, clinical psychologist, or clinical social worker.

(4) Furnished under the direct, personal supervision of a physician, nurse practitioner, physician assistant, certified nurse midwife, clinical psychologist, or clinical social worker.

(5) In the case of a service, furnished by a member of the RHC’s health care staff who is an employee of the RHC.

(b) The direct personal supervision requirement is met in the case of any of the following persons only if the person is permitted to supervise these services under the written policies governing the RHC:

- (1) Nurse practitioner.
- (2) Physician assistant.
- (3) Certified nurse midwife.
- (4) Clinical psychologist.
- (5) Clinical social worker.

(c) Only drugs and biologicals which cannot be self-administered are included within the scope of this benefit.

■ 13. Section 405.2416 is amended as follows:

- A. Revising paragraphs (a) introductory text and (a)(1).
- B. In paragraph (a)(2), removing the semicolon and adding a period in its place.
- C. Revising paragraphs (a)(3) and (4).
- D. Revising paragraphs (b) introductory text and (b)(1).

The revisions read as follows:

#### § 405.2416 Visiting nurse services.

(a) Visiting nurse services are covered if the services meet all of the following:

(1) The RHC or FQHC is located in an area in which the Secretary has determined that there is a shortage of home health agencies.

\* \* \* \* \*

(3) The services are furnished by a registered professional nurse or licensed practical nurse that is employed by, or receives compensation for the services from the RHC or FQHC.

(4) The services are furnished under a written plan of treatment that is both of the following:

(i)(A) Established and reviewed at least every 60 days by a supervising physician of the RHC or FQHC; or

(B) Established by a nurse practitioner, physician assistant, or certified nurse midwife and reviewed at least every 60 days by a supervising physician.

(ii) Signed by the supervising physician, nurse practitioner, physician assistant or certified nurse midwife of the RHC or FQHC.

(b) The nursing care covered by this section includes the following:

(1) Services that must be performed by a registered professional nurse or licensed practical nurse if the safety of the patient is to be assured and the medically desired results achieved.

\* \* \* \* \*

#### § 405.2417 [Amended]

■ 14. Section 405.2417 is amended as follows:

- A. In the introductory text, removing the phrase “rural health clinic” and adding in its place “RHC or FQHC”.
- B. In paragraph (a), removing the phrase “rural health clinic” and adding in its place “RHC or FQHC”.
- C. In paragraph (b), removing “; or” and adding in its place “.”.

■ 15. Section 405.2430 is amended as follows:

- A. Revising paragraphs (a)(1) introductory text and (a)(1)(i) and (ii).
- B. In paragraph (a)(4), removing the phrase “Federally qualified health center” and adding in its place the term “FQHC”.
- C. Revising paragraph (b).
- D. Removing paragraph (c).
- E. Redesignating paragraph (d) as paragraph (c).

The revisions read as follows:

#### § 405.2430 Basic requirements.

(a) \* \* \*

(1) In response to a request from an entity that wishes to participate in the Medicare program, CMS enters into an agreement with an entity when all of the following occur:

(i) HRSA approves the entity as meeting the requirements of section 330 of the PHS Act.

(ii) The entity assures CMS that it meets the requirements specified in this subpart and part 491, as described in § 405.2434(a).

\* \* \* \* \*

(b) *Prior HRSA FQHC determination.* An entity applying to become a FQHC must do the following:

(1) Be determined by HRSA as meeting the applicable requirements of the PHS Act, as specified in § 405.2401(b).

(2) Receive approval by HRSA as a FQHC under section 330 of the PHS Act (42 U.S.C. 254b).

\* \* \* \* \*

■ 16. Section 405.2434 is amended as follows:

■ A. In the introductory text, removing the phrase “Federally qualified health center” and adding in its place the term “FQHC”.

■ B. In paragraph (a)(1), removing the phrase “Federally qualified health center” and adding in its place the term “FQHC” each time it appears.

■ C. In paragraph (a)(2), removing the term “Centers” and adding in its place the term “FQHCs”.

■ D. Revising paragraphs (b) and (c)(1).

■ E. In paragraph (c)(3), removing the phrase “Federally qualified health center” and adding in its place the term “FQHC” each time it appears.

■ F. Revising paragraph (c)(4).

■ G. In paragraphs (d)(1), (d)(3) introductory text, and (e)(1) through (3) by removing the phrase “Federally qualified health center” and adding in its place the term “FQHC”.

■ H. In paragraphs (d)(3)(ii) and (e)(2) by removing the phrase “Federally qualified health center’s” and adding in its place the term “FQHC’s”.

The revisions read as follows:

#### § 405.2434 Content and terms of the agreement.

\* \* \* \* \*

(b) *Effective date of agreement.* The effective date of the agreement is determined in accordance with the provisions of § 489.13.

(c) \* \* \*

(1) For non-FQHC services that are billed to Part B, the beneficiary is responsible for payment of a coinsurance amount which is 20 percent of the amount of Part B payment made to the center for the covered services.

\* \* \* \* \*

(4) The FQHC may charge the beneficiary for items and services that are not FQHC services. If the item or service is covered under Medicare Part B, the FQHC may not charge the beneficiary more than 20 percent of the Part B payment amount.

\* \* \* \* \*

#### § 405.2436 [Amended]

■ 17. Section 405.2436 is amended as follows:

■ A. In paragraphs (a) introductory text, (a)(2), (b)(1)(i), (b)(3), (c)(1) introductory text, (c)(2), (c)(3), and (d) by removing the phrase “Federally qualified health center” each time it appears and adding in its place the term “FQHC”.

■ B. In paragraphs (b)(1) introductory text, (b)(1)(ii), (b)(2) introductory text, and (d) by removing the phrase “Federally qualified health center’s” and adding in its place the term “FQHC’s”.

■ 18. Section 405.2440 is amended by revising the introductory text to read as follows.

#### § 405.2440 Conditions for reinstatement after termination by CMS.

When CMS has terminated an agreement with a FQHC, CMS does not enter into another agreement with the FQHC to participate in the Medicare program unless CMS—

\* \* \* \* \*

#### § 405.2442 [Amended]

■ 19. Section 405.2442 is amended as follows:

■ A. In paragraph (a) introductory text by removing the phrase “Federally qualified health center” and adding in its place the term “FQHC”.

■ B. In paragraph (b) by removing the phrase “Federally qualified health center’s” and adding in its place the term “FQHC’s”.

#### § 405.2444 [Amended]

■ 20. Section 405.2444 is amended as follows:

■ A. In paragraph (c), removing the phrase “Federally qualified health center” and adding in its place the term “FQHC” each time it appears.

■ B. In paragraphs (a)(2) and (c) by removing the term “center” each time it appears, and by adding in its place the term “FQHC”.

■ 21. Section 405.2446 is amended as follows:

■ A. Revising paragraphs (a), (b)(2), (3), (4), and (6).

■ B. Removing paragraph (b)(8).

■ C. Redesignating paragraphs (b)(9) and (10) as (b)(8) and (9), respectively.

■ D. In paragraphs (c) and (d), removing the phrase “Federally quality health center” and adding in its place the term “FQHC”.

The revisions read as follows:

#### **§ 405.2446 Scope of services.**

(a) For purposes of this section, the terms rural health clinic and RHC when they appear in the cross references in paragraph (b) of this section also mean Federally qualified health centers and FQHCs.

(b) \* \* \*

(2) Services and supplies furnished as incident to a physician’s professional service, as specified in § 405.2413.

(3) Nurse practitioner, physician assistant or certified nurse midwife services as specified in § 405.2414.

(4) Services and supplies furnished as incident to a nurse practitioner, physician assistant, or certified nurse midwife service, as specified in § 405.2415.

\* \* \* \* \*

(6) Services and supplies furnished as incident to a clinical psychologist or clinical social worker service, as specified in § 405.2452.

\* \* \* \* \*

■ 22. Section 405.2448 is amended as follows:

■ A. Revising paragraphs (a) introductory text and (a)(1) through (3).

■ B. In paragraph (b) introductory text, removing the phrase “Federally quality health centers” and adding in its place the term “FQHCs”.

■ C. In paragraph (d), removing the phrase “a Federally qualified health center service, but may be provided at a Federally qualified health center if the center” and adding in its place the phrase “FQHC service, but may be provided at a FQHC if the FQHC”.

The revisions read as follows:

#### **§ 405.2448 Preventive primary services.**

(a) Preventive primary services are those health services:

(1) A FQHC is required to provide as preventive primary health services under section 330 of the PHS Act.

(2) Furnished by or under the direct supervision of a physician, nurse practitioner, physician assistant, certified nurse midwife, clinical psychologist or clinical social worker.

(3) In the case of a service, furnished by a member of the FQHC’s health care staff who is an employee of the FQHC or by a physician under arrangements with the FQHC.

\* \* \* \* \*

#### **§ 405.2449 [Amended]**

■ 23. Section 405.2449 is amended as follows:

■ A. In the introductory text, removing the phrase “Federally qualified health center” and adding in its place the term “FQHC”.

■ B. In paragraph (b), removing “; and” and adding in its place “.”.

#### **§ 405.2452 [Amended]**

■ 24. Section 405.2452 is amended as follows:

■ A. In paragraph (a)(2), by removing the phrase “Federally quality health center’s” and adding in its place the term “FQHC’s”.

■ B. In paragraph (b), by removing the phrase “Federally quality health center” and adding in its place the term “FQHC”.

■ C. In paragraph (a)(5), removing the term “center” and adding in its place the term “FQHC”.

■ 25. Section 405.2460 is revised to read as follows:

#### **§ 405.2460 Applicability of general payment exclusions.**

The payment conditions, limitations, and exclusions set out in subpart C of this part, part 410 and part 411 of this chapter are applicable to payment for services provided by RHCs and FQHCs, except that preventive primary services, as defined in § 405.2448, are statutorily authorized in FQHCs and not excluded by the provisions of section 1862(a) of the Act.

■ 26. Section 405.2462 is revised to read as follows:

#### **§ 405.2462 Payment for RHC and FQHC services.**

(a) *Payment to provider-based RHCs and FQHCs that are authorized to bill under the reasonable cost system.* A RHC or FQHC that is authorized to bill under the reasonable cost system is paid in accordance with parts 405 and 413 of this subchapter, as applicable, if the RHC or FQHC is—

(1) An integral and subordinate part of a hospital, skilled nursing facility or home health agency participating in Medicare (that is, a provider of services); and

(2) Operated with other departments of the provider under common licensure, governance and professional supervision.

(b) *Payment to independent RHCs and freestanding FQHCs that are authorized to bill under the reasonable cost system.*

(1) RHCs and FQHCs that are authorized to bill under the reasonable cost system are paid on the basis of an all-inclusive rate for each beneficiary visit for covered services. This rate is determined by the MAC, in accordance with this subpart and general instructions issued by CMS.

(2) The amount payable by the MAC for a visit is determined in accordance with paragraphs (e)(1) and (2) of this section.

(c) *Payment to FQHCs that are authorized to bill under the prospective payment system.* A FQHC that is authorized to bill under the prospective payment system is paid a single, per diem rate based on the prospectively set rate for each beneficiary visit for covered services. This rate is adjusted for the following:

(1) Geographic differences in cost based on the Geographic Practice Cost Indices (GPCIs) in accordance with 1848(e) of the Act and 42 CFR 414.2 and 414.26 and used to adjust payment under the physician fee schedule, limited to only the work and practice expense GPCIs.

(2) Furnishing of care to a new patient with respect to the FQHC, including all sites that are part of the FQHC, or to a beneficiary receiving a comprehensive initial Medicare visit (that is an initial preventive physical examination or an initial annual wellness visit). A new patient is one that has not been seen in the FQHC’s organization within the previous 3 years.

(d) For FQHC visits, Medicare pays 80 percent of the all-inclusive rate for FQHCs that are authorized to bill under the reasonable cost system, and 80 percent of the lesser of the FQHC’s charge or the PPS encounter rate for FQHCs authorized to bill under the PPS. No deductible is applicable to FQHC services.

(e) For RHCs visits, payment is made in accordance with one of the following:

(1) If the deductible has been fully met by the beneficiary prior to the RHC, Medicare pays 80 percent of the all-inclusive rate.

(2) If the deductible has not been fully met by the beneficiary before the visit, and the amount of the RHC’s reasonable customary charge for the services that is applied to the deductible is less than the all-inclusive rate, the amount applied to the deductible is subtracted from the all-

inclusive rate and 80 percent of the remainder, if any, is paid to the RHC.

(3) If the deductible has not been fully met by the beneficiary before the visit, and the amount of the RHC's reasonable customary charge for the services that is applied to the deductible is equal to or exceeds the all-inclusive rate, no payment is made to the RHC.

(f) To receive payment, the FQHC or RHC must do all of the following:

(1) Furnish services in accordance with the requirements of subpart X of part 405 of this chapter and subpart A of part 491 of this chapter.

(2) File a request for payment on the form and manner prescribed by CMS.

27. Section 405.2463 is revised to read as follows:

**§ 405.2463 What constitutes a visit.**

(a) *Visit.* (1) *General.* (i) For RHCs, a visit is a face-to-face encounter between a RHC patient and one of the following:

- (A) Physician.
- (B) Physician assistant.
- (C) Nurse practitioner.
- (D) Certified nurse midwife.
- (E) Visiting registered professional or licensed practical nurse.
- (G) Clinical psychologist.
- (H) Clinical social worker.
- (I) Qualified transitional care management service.

(ii) For FQHCs, a visit is either of the following:

(A) A face-to-face encounter as described in paragraph (a)(1)(i) of this section.

(B) A face-to-face encounter between a patient and one of the following:

(1) A qualified provider of medical nutrition therapy services as defined in part 410 subpart G of this chapter.

(2) A qualified provider of outpatient diabetes self-management training services as defined in part 410 subpart H of this chapter.

(2) *Medical visit.* (i) A medical visit is a face-to-face encounter between a RHC or FQHC patient and one of the following:

- (A) Physician.
- (B) Physician assistant.
- (C) Nurse practitioner.
- (D) Certified nurse midwife.
- (E) Visiting registered professional or licensed practical nurse.

(i) A medical visit for FQHCs may also include a—

- (A) Medical nutrition therapy visit; or
- (B) Diabetes outpatient self-management training visit.

(3) *Mental health visit.* A mental health visit is a face-to-face encounter between a RHC or FQHC patient and one of the following:

- (i) Clinical psychologist.
- (ii) Clinical social worker.

(iii) Other RHC or FQHC practitioner for mental health services.

(b) *Encounters and Payment for RHCs and FQHCs that are not being paid under section 1834(o) of the Act.* (1) For RHCs and FQHCs that are authorized to bill under the reasonable cost system, encounters with more than one health professional and multiple encounters with the same health professional that take place on the same day and at a single location constitute a single visit, except when one of the following conditions exist:

(i) The patient, subsequent to the first visit, suffers an illness or injury that requires additional diagnosis or treatment on the same day.

(ii) The patient has a medical visit and a mental health visit on the same day.

(iii) The patient has an initial preventive physical exam visit and a separate medical or mental health visit on the same day.

(2) For RHCs and FQHCs that are authorized to bill under the reasonable cost system, Medicare pays RHCs and FQHCs that are not being paid under section 1834(o) of the Act for more than 1 visit per day when the conditions in paragraph (b) of this section are met.

■ 28. Section 405.2464 is revised to read as follows:

**§ 405.2464 Payment rate.**

(a) *Determination of the payment rate for RHCs and FQHCs that are authorized to bill on the basis of reasonable cost.* (1) An all-inclusive rate is determined by the MAC at the beginning of the cost reporting period.

(2) The rate is determined by dividing the estimated total allowable costs by estimated total visits for RHC or FQHC services.

(3) The rate determination is subject to any tests of reasonableness that may be established in accordance with this subpart.

(4) The MAC, during each reporting period, periodically reviews the rate to assure that payments approximate actual allowable costs and visits and adjusts the rate if:

- (i) There is a significant change in the utilization of services;
- (ii) Actual allowable costs vary materially from allowable costs; or
- (iii) Other circumstances arise which warrant an adjustment.

(5) The RHC or FQHC may request the MAC to review the rate to determine whether adjustment is required.

(b) *Determination of the payment rate for FQHCs billing under the prospective payment system.* (1) An encounter-based rate is calculated by CMS by dividing total FQHC costs by total

FQHC encounters to establish an average cost per encounter.

(2) The exceptions in § 405.2463(b) do not apply.

(3) The encounter-based rate is adjusted—

(i) For geographic differences in the cost of inputs according to § 405.2462(c)(1).

(ii) When the FQHC furnishes services to a new patient, as defined in § 405.2462(b)(3)(ii).

(iii) When a beneficiary receives a comprehensive initial Medicare visit (that is, an initial preventive physical examination or an initial annual wellness visit).

■ 29. Section 405.2466 is amended as follows:

■ A. By revising paragraph (a) and the paragraph (b) heading.

■ B. In paragraph (b)(1) introductory text by removing the term “intermediary” each time it appears and by adding in its place the term “MAC”.

■ C. In paragraphs (b)(1)(i), and (b)(1)(ii)

by removing the term “rural health clinic” each time it appears and by adding in its place the term “RHC”.

■ D. Revising paragraph (b)(1)(iii).

■ E. In paragraph (b)(1)(iv) by removing the term “rural health clinics” and by adding in its place the term “RHCs”.

■ F. In paragraphs (b)(1)(i), and (b)(1)(ii) by removing the term “Federally qualified health center” and by adding in its place the term “FQHC”.

■ G. In paragraphs (b)(1) introductory text, (b)(2), (c)(1), and (c)(2) by removing the word “clinic” each time it appears and by adding in its place the term “RHC”.

■ H. In paragraphs (b)(1) introductory text, (b)(2), (c)(1), (c)(2), and (d)(2) by removing the word “center” each time it appears and by adding in its place the term “FQHC”.

■ I. Revising paragraphs (c) introductory text, and (d)(1).

■ J. In paragraph (d)(2) by removing the term “intermediary” each time it appears and by adding in its place the term “MAC”.

The revisions read as follows:

**§ 405.2466 Annual reconciliation.**

(a) *General.* Payments made to RHCs or FQHCs that are authorized to bill under the reasonable cost system during a reporting period are subject to annual reconciliation to assure that those payments do not exceed or fall short of the allowable costs attributable to covered services furnished to Medicare beneficiaries during that period.

(b) *Calculation of reconciliation for RHCs or FQHCs that are authorized to bill under the reasonable cost system.*

(1) \* \* \*

(iii) The total payment due the RHC is 80 percent of the amount calculated by subtracting the amount of deductible incurred by beneficiaries that is attributable to RHC services from the cost of these services. FQHC services are not subject to a deductible and the payment computation for FQHCs does not include a reduction related to the deductible.

\* \* \* \* \*

(c) *Notice of program reimbursement.* The MAC notifies the RHC or FQHC that is authorized to bill under the reasonable costs system:

\* \* \* \* \*

(d) \* \* \*

(1) *Underpayments.* If the total reimbursement due the RHC or FQHC that is authorized to bill under the reasonable cost system exceeds the payments made for the reporting period, the MAC makes a lump-sum payment to the RHC or FQHC to bring total payments into agreement with total reimbursement due the RHC or FQHC.

\* \* \* \* \*

■ 30. Add § 405.2467 to read as follows:

**§ 405.2467 Requirements of the FQHC PPS.**

(a) *Cost reporting.* For cost reporting periods beginning on or after October 1, 2014, FQHCs are paid on a PPS basis that does all of the following:

(1) Includes a process for appropriately describing the services furnished by FQHCs.

(2) Establishes payment rates for specific payment codes based on such appropriate descriptions of services.

(3) Takes into account the type, intensity and duration of services furnished by FQHCs.

(4) May include adjustments (such as geographic adjustments) determined by the Secretary.

(b) *HCPSCS coding.* FQHCs are required to submit HCPCS codes in reporting services furnished.

(c) *Initial payments.* (1) Beginning October 1, 2014, for the first fifteen months of the PPS, the estimated aggregate amount of PPS rates is equal to 100 percent of the estimated amount of reasonable costs that would have occurred for that period if the PPS had not been implemented.

(2) Payment amount is calculated prior to any FQHC payments based on the reasonable cost system.

(d) *Payments in subsequent years.* (1) Beginning January 1, 2016, PPS payment rates will be increased by the percentage increase in the Medicare economic index.

(2) Beginning January 1, 2017, PPS rates will be increased by the percentage

increase in a market basket of FQHC goods and services as established through regulations, or, if not available, the Medicare economic index.

■ 31. Section 405.2468 is amended:

■ A. In paragraph (a) by removing the word “intermediary”, and by adding in its place the word “MAC”.

■ B. In paragraphs (b) introductory text and (c) by removing the term “rural health clinic” and by adding in its place the term “RHC”.

■ C. In paragraph (b) introductory text by removing the term “Federally qualified health center” and by adding in its place the term “FQHC”.

■ D. In paragraphs (b)(4), (b)(5), (d)(2)(iv), and (d)(2)(v) by removing the word “clinic” each time it appears and by adding in its place the term “RHC”.

■ E. In paragraphs (b)(4), (b)(5), (d)(2)(iv), (d)(2)(v) by removing the word “center” each time it appears and by adding in its place the term “FQHC”.

■ F. Revising paragraphs (b)(1), (c), and (d)(1).

The revisions read as follows:

**§ 405.2468 Allowable costs.**

\* \* \* \* \*

(b) \* \* \*

(1) Compensation for the services of a physician, physician assistant, nurse practitioner, certified nurse-midwife, visiting registered professional or licensed practical nurse, clinical psychologist, and clinical social worker who owns, is employed by, or furnishes services under contract to a FQHC or RHC.

\* \* \* \* \*

(c) *Tests of reasonableness of cost and utilization.* Tests of reasonableness authorized by sections 1833(a) and 1861(v)(1)(A) of the Act may be established by CMS or the MAC with respect to direct or indirect overall costs, costs of specific items and services, or costs of groups of items and services. For RHCs and FQHCs that are authorized to bill under the reasonable cost system, these tests include, but are not limited to, screening guidelines and payment limits.

(d) *Screening guidelines.* (1) Costs in excess of amounts established by the guidelines are not included unless the RHC or FQHC that is authorized to bill under the reasonable cost system provides reasonable justification satisfactory to the MAC.

\* \* \* \* \*

■ 32. Section 405.2469 is revised by to read as follows:

**§ 405.2469 Federally qualified health centers (FQHCs) supplemental payments.**

(a) *Eligibility for supplemental payments.* FQHCs under contract

(directly or indirectly) with MA organizations are eligible for supplemental payments for FQHC services furnished to enrollees in MA plans offered by the MA organization to cover the difference, if any, between their payments from the MA plan and what they would receive either:

(1) Under the reasonable cost payment system if the FQHC is authorized to bill under the reasonable cost payment system, or

(2) The PPS rate if the FQHC is authorized to bill under the PPS.

(b) *Calculation of supplemental payment.* The supplemental payment for FQHC covered services provided to Medicare patients enrolled in MA plans is based on the difference between—

(1) Payments received by the FQHC from the MA plan as determined on a per visit basis and the FQHCs all-inclusive cost-based per visit rate as set forth in this subpart, less any amount the FQHC may charge as described in section 1857(e)(3)(B) of the Act, or

(2) Payments received by the FQHC from the MA plan as determined on a per visit basis and the FQHC PPS rate as set forth in this subpart, less any amount the FQHC may charge as described in section 1857(e)(3)(B) of the Act.

(c) *Financial incentives.* Any financial incentives provided to FQHCs under their MA contracts, such as risk pool payments, bonuses, or withholds, are prohibited from being included in the calculation of supplemental payments due to the FQHC.

(d) *Per visit supplemental payment.* A supplemental payment required under this section is made to the FQHC when a covered face-to-face encounter occurs between a MA enrollee and a practitioner as set forth in § 405.2463.

**§ 405.2470 [Amended]**

■ 33. Section 405.2470 is amended by:

■ A. In paragraphs (a)(1), (b)(1), and (c)(3) through (5) by removing the word “intermediary”, and by adding in its place the word “MAC”.

■ B. In paragraphs (b)(2), by removing the word “intermediary’s” and adding in its place the word “MAC’s”.

■ C. In paragraphs (a) introductory text, (c)(1), and (c)(2)(i) and (ii) by removing the term “rural health clinic” and by adding in its place the term “RHC”.

■ D. In paragraphs (a) introductory text, (c)(1), and (c)(2)(i) and (ii) by removing the term “Federally qualified health center” and by adding in its place the term “FQHC”.

■ E. In paragraphs (b)(1) and (2), (c)(1), (c)(2) introductory text, and (c)(3) through (6) by removing the word “clinic” and by adding in its place the term “RHC”.

■ F. In paragraphs (b)(1) and (2), (c)(1), (c)(2) introductory text, and (c)(3) through (6) by removing the word “center” each time it appears and by the term “FQHC”.

■ 34. Section 405.2472 is amended by revising paragraph (a) to read as follows:

**§ 405.2472 Beneficiary appeals.**

(a) The beneficiary is dissatisfied with a MAC’s determination denying a request for payment made on his or her behalf by a RHC or FQHC;

**PART 491—CERTIFICATION OF CERTAIN HEALTH FACILITIES**

■ 35. The authority citation for part 491 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302); and sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

■ 36. Section 491.8 is amended by revising paragraph (a)(3).

**§ 491.8 Staffing and staff responsibilities.**

(a) \* \* \*

(3) The physician assistant, nurse practitioner, nurse-midwife, clinical social worker or clinical psychologist member of the staff may be the owner or an employee of the clinic or center, or may furnish services under contract to the clinic or center. In the case of a clinic, at least one physician assistants or nurse practitioner must be an employee of the clinic.

**PART 493—LABORATORY REQUIREMENTS**

■ 37. The authority citation for Part 493 is revised to read as follows:

**Authority:** Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), the sentence following sections 1861(s)(11) through 1861(s)(16) of the Social Security Act (42 U.S.C. 263a, 1302, 1395x(e), the sentence following 1395x(s)(11) through 1395x(s)(16)), and the Public Law 112–202 amendments to 42 U.S.C 263a.

■ 38. Section 493.1 is amended by revising the second sentence to read as follows:

**§ 493.1 Basis and scope.**

\* \* \* It implements sections 1861 (e) and (j), the sentence following section 1861(s)(13), and 1902(a)(9) of the Social Security Act, and section 353 of the Public Health Service Act, as amended by section 2 of the Taking Essential Steps for Testing Act of 2012. \* \* \*

■ 39. Section 493.2 is revised by adding the definition of “Repeat proficiency testing referral” in alphabetical order to read as follows:

**§ 493.2 Definitions.**

\* \* \* \* \*

*Repeat proficiency testing referral* means a second instance in which a proficiency testing sample, or a portion of a sample, is referred, for any reason, to another laboratory for analysis prior to the laboratory’s proficiency testing program event cut-off date within the period of time encompassing the two prior survey cycles (including initial certification, recertification, or the equivalent for laboratories surveyed by an approved accreditation organizations).

■ 40. Section 493.1800 is amended by revising paragraph (a)(2) introductory text to read as follows:

**§ 493.1800 Basis and scope.**

(a) \* \* \*

(2) The Clinical Laboratories Improvement Act of 1967 (section 353 of the Public Health Service Act) as amended by CLIA 1988, as amended by section 2 of the Taking Essential Steps for Testing Act of 2012.

■ 41. Section 493.1840 is amended by revising paragraph (b) to read as follows:

**§ 493.1840 Suspension, limitation, or revocation of any type of CLIA certificate.**

(b) *Adverse action based on improper referrals in proficiency testing.* If CMS determines that a laboratory has intentionally referred its proficiency testing samples to another laboratory for analysis, CMS does one of the following:

(1) Revokes the laboratory’s CLIA certificate for at least 1 year, prohibits the owner and operator from owning or operating a CLIA-certified laboratory for at least 1 year, and may also impose a civil money penalty in accordance with § 493.1834(d), if CMS determines that—

(i) A proficiency testing referral is a repeat proficiency testing referral as defined at § 493.2; or

(ii) On or before the proficiency testing event close date, a laboratory reported proficiency testing results obtained from another laboratory to the proficiency testing program.

(2) Suspends or limits the CLIA certificate for less than 1 year based on the criteria in § 493.1804(d), and also impose alternate sanctions as appropriate, in accordance with §§ 493.1804(c) and (d), 493.1806(c), 493.1807(b), 493.1809 and, in the case of civil money penalties, § 493.1834(d), when CMS determines that paragraph (b)(1)(i) or (ii) of this section does not apply but that the laboratory obtained test results for the proficiency testing samples from another laboratory on or

before the proficiency testing event close date. Among other possibilities, alternative sanctions will always include a civil money penalty and a directed plan of correction that includes required training of staff.

(3) Imposes alternate sanctions in accordance with §§ 493.1804(c) and (d), 493.1806(c), 493.1807(b), 493.1809 and, in the case of civil money penalties, § 493.1834(d), when CMS determines that paragraph (b)(1) or (2) of this section do not apply, and a PT referral has occurred, but no test results are received prior to the event close date by the referring laboratory from the laboratory that received the referral. Among other possibilities, alternative sanctions will always include a civil money penalty and a directed plan of correction that includes required training of staff.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare Supplementary Medical Insurance Program)

Dated: September 5, 2013.

**Marilyn Tavenner,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: September 10, 2013.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

**Note:** The following Addendum will not appear in the Code of Federal Regulations.

**Addendum: Proposed Geographic Adjustment Factors (GAFs) for the FQHC PPS**

As described in section I.I.C.2. of this proposed rule, the proposed GAFs for the FQHC PPS are based on the proposed CY 2014 work and practice expense GPCIs and the proposed cost share weights for the CY 2014 GPCI update, as published in the CY 2014 PFS proposed rule. These GAFs are subject to change in the final FQHC PPS rule based on more current data, including the finalized PFS GPCI and cost share weight values.

|    | Locality name               | GAF   |
|----|-----------------------------|-------|
| 1  | Alabama .....               | 0.933 |
| 2  | Alaska .....                | 1.306 |
| 3  | Arizona .....               | 0.984 |
| 4  | Arkansas .....              | 0.919 |
| 5  | Anaheim/Santa Ana, CA ..... | 1.122 |
| 6  | Los Angeles, CA .....       | 1.095 |
| 7  | Marin/Napa/Solano, CA ..... | 1.154 |
| 8  | Oakland/Berkeley, CA .....  | 1.152 |
| 9  | San Francisco, CA .....     | 1.215 |
| 10 | San Mateo, CA .....         | 1.209 |
| 11 | Santa Clara, CA .....       | 1.203 |
| 12 | Ventura, CA .....           | 1.104 |
| 13 | Rest of California .....    | 1.053 |
| 14 | Colorado .....              | 1.002 |
| 15 | Connecticut .....           | 1.066 |

| Locality name                      | GAF   | Locality name                            | GAF   | Locality name                    | GAF   |
|------------------------------------|-------|--|-------|----------------------------------|-------|
| 16 DC + MD/VA Suburbs .....        | 1.120 | 47 Rest of Missouri .....                | 0.905 | 77 Fort Worth, TX .....          | 0.995 |
| 17 Delaware .....                  | 1.024 | 48 Montana .....                         | 0.974 | 78 Galveston, TX .....           | 1.009 |
| 18 Fort Lauderdale, FL .....       | 1.013 | 49 Nebraska .....                        | 0.938 | 79 Houston, TX .....             | 1.009 |
| 19 Miami, FL .....                 | 1.016 | 50 Nevada .....                          | 1.026 | 80 Rest of Texas .....           | 0.952 |
| 20 Rest of Florida .....           | 0.973 | 51 New Hampshire .....                   | 1.021 | 81 Utah .....                    | 0.945 |
| 21 Atlanta, GA .....               | 1.005 | 52 Northern NJ .....                     | 1.108 | 82 Vermont .....                 | 0.991 |
| 22 Rest of Georgia .....           | 0.940 | 53 Rest of New Jersey .....              | 1.070 | 83 Virginia .....                | 0.986 |
| 23 Hawaii/Guam .....               | 1.075 | 54 New Mexico .....                      | 0.954 | 84 Virgin Islands .....          | 1.000 |
| 24 Idaho .....                     | 0.935 | 55 Manhattan, NY .....                   | 1.107 | 85 Seattle (King Cnty), WA ..... | 1.083 |
| 25 Chicago, IL .....               | 1.032 | 56 NYC Suburbs/Long I., NY .....         | 1.123 | 86 Rest of Washington .....      | 1.003 |
| 26 East St. Louis, IL .....        | 0.962 | 57 Poughkpsie/N NYC Suburbs,<br>NY ..... | 1.038 | 87 West Virginia .....           | 0.901 |
| 27 Suburban Chicago, IL .....      | 1.040 | 58 Queens, NY .....                      | 1.122 | 88 Wisconsin .....               | 0.972 |
| 28 Rest of Illinois .....          | 0.944 | 59 Rest of New York .....                | 0.965 | 89 Wyoming .....                 | 0.989 |
| 29 Indiana .....                   | 0.947 | 60 North Carolina .....                  | 0.953 |                                  |       |
| 30 Iowa .....                      | 0.929 | 61 North Dakota .....                    | 0.982 |                                  |       |
| 31 Kansas .....                    | 0.933 | 62 Ohio .....                            | 0.959 |                                  |       |
| 32 Kentucky .....                  | 0.925 | 63 Oklahoma .....                        | 0.913 |                                  |       |
| 33 New Orleans, LA .....           | 0.983 | 64 Portland, OR .....                    | 1.024 |                                  |       |
| 34 Rest of Louisiana .....         | 0.929 | 65 Rest of Oregon .....                  | 0.975 |                                  |       |
| 35 Southern Maine .....            | 0.998 | 66 Metropolitan Philadelphia, PA ...     | 1.043 |                                  |       |
| 36 Rest of Maine .....             | 0.940 | 67 Rest of Pennsylvania .....            | 0.957 |                                  |       |
| 37 Baltimore/Surr. Cntys, MD ..... | 1.058 | 68 Puerto Rico .....                     | 0.808 |                                  |       |
| 38 Rest of Maryland .....          | 1.023 | 69 Rhode Island .....                    | 1.035 |                                  |       |
| 39 Metropolitan Boston .....       | 1.081 | 70 South Carolina .....                  | 0.945 |                                  |       |
| 40 Rest of Massachusetts .....     | 1.037 | 71 South Dakota .....                    | 0.974 |                                  |       |
| 41 Detroit, MI .....               | 1.009 | 72 Tennessee .....                       | 0.936 |                                  |       |
| 42 Rest of Michigan .....          | 0.957 | 73 Austin, TX .....                      | 1.001 |                                  |       |
| 43 Minnesota .....                 | 1.005 | 74 Beaumont, TX .....                    | 0.941 |                                  |       |
| 44 Mississippi .....               | 0.916 | 75 Brazoria, TX .....                    | 1.002 |                                  |       |
| 45 Metropolitan Kansas City, MO .. | 0.968 | 76 Dallas, TX .....                      | 1.013 |                                  |       |
| 46 Metropolitan St Louis, MO ..... | 0.974 |  |       |                                  |       |

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Part III

## Environmental Protection Agency

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40 CFR Part 60

Oil and Natural Gas Sector: Reconsideration of Certain Provisions of New Source Performance Standards; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 60**

[EPA-HQ-OAR-2010-0505, FRL-9844-4]

RIN 2060-AR75

**Oil and Natural Gas Sector:  
Reconsideration of Certain Provisions  
of New Source Performance Standards****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final Amendments.

**SUMMARY:** This action finalizes the amendments to new source performance standards for the oil and natural gas sector. The Administrator received petitions for reconsideration of certain aspects of the August 12, 2012, final standards. These amendments are a result of reconsideration of certain issues raised by petitioners related to implementation of storage vessel provisions. The final amendments provide clarity of notification and compliance dates, ensure control of all storage vessel affected facilities and update key definitions. This action also corrects technical errors that were inadvertently included in the final standards.

**DATES:** This final rule is effective on September 23, 2013.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2010-0505. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA's Docket Center, Public Reading Room, EPA West Building, Room Number 3334, 1301 Constitution Avenue NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bruce Moore, Sector Policies and Programs Division (E143-05), Office of Air Quality Planning and Standards,

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**SUPPLEMENTARY INFORMATION:**

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**I. Preamble Acronyms and Abbreviations**

Several acronyms and terms are included in this preamble. While this may not be an exhaustive list, to ease the reading of this preamble and for reference purposes, the following terms and acronyms are defined here:

API American Petroleum Institute  
 AVO Auditory, Visual and Olfactory  
 BOE Barrels of Oil Equivalent  
 bbl Barrel  
 bpd Barrels Per Day  
 BID Background Information Document  
 BSER Best System of Emissions Reduction  
 CAA Clean Air Act  
 CFR Code of Federal Regulations  
 CPMS Continuous Parametric Monitoring Systems  
 EIA Energy Information Administration  
 EPA Environmental Protection Agency  
 GOR Gas to Oil Ratio  
 HAP Hazardous Air Pollutant  
 HPDI HPDI, LLC  
 Mcf Thousand Cubic Feet  
 NTTAA National Technology Transfer and Advancement Act of 1995  
 NEI National Emissions Inventory  
 NEMS National Energy Modeling System  
 NESHAP National Emissions Standards for Hazardous Air Pollutants  
 NSPS New Source Performance Standards  
 OAQPS Office of Air Quality Planning and Standards  
 OMB Office of Management and Budget  
 PRA Paperwork Reduction Act  
 PTE Potential to Emit  
 RFA Regulatory Flexibility Act  
 SISNOSE Significant Economic Impact on a Substantial Number of Small Entities  
 tpy Tons per Year  
 TTN Technology Transfer Network  
 UMRA Unfunded Mandates Reform Act  
 VCS Voluntary Consensus Standards  
 VOC Volatile Organic Compounds  
 VRU Vapor Recovery Unit

**II. General Information****A. Executive Summary****1. Purpose of This Regulatory Action**

The purpose of this action is to finalize amendments to the 40 CFR part 60, subpart OOOO, Standards of Performance for Crude Oil and Natural Gas Production, Transmission and

Distribution final rule promulgated under section 111(b) of the Clean Air Act (CAA), which was published on August 16, 2012 [77 FR 49490]. The amendments being finalized were proposed on April 12, 2012 [78 FR 22126]. Specifically, this final rule action amends aspects of the 2012 new source performance standards (2012 NSPS) to address select issues raised by different stakeholders through several administrative petitions for reconsideration of the 2012 NSPS. The select issues being reconsidered and addressed by this action are related primarily to implementation of the storage vessel provisions.

## 2. Summary of Major Amendments to the NSPS

This rule finalizes a number of aspects of the proposal but, after consideration of public comments received, it also makes certain changes, as described in this section.

### a. Initial Notification and Compliance Dates

For Group 1 storage vessels (*i.e.*, those the construction, reconstruction or modification of which began after August 23, 2011, and on or before April 12, 2013),<sup>1</sup> the final amendments require that owners/operators estimate emissions from the storage vessels to determine affected facility no later than October 15, 2013, and a notification be submitted with the facilities' annual report due by January 15, 2014, to inform regulatory agencies of the existence and location of the Group 1 storage vessel affected facilities. The final amendments retain the requirement that all Group 1 storage vessel affected facilities comply with the emission standards but, in a change from proposal, extend the compliance deadline to April 15, 2015. Since all Group 1 affected facilities are required to meet the emission standards, the final amendments do not require Group 1 storage vessel affected facilities to track emission increase events, as we had proposed.

For Group 2 storage vessel affected facilities (*i.e.*, those the construction, reconstruction or modification of which began after April 12, 2013), the final amendments extend the compliance date to April 15, 2014 (or 60 days after startup, whichever is later), for implementing the emission standards, as proposed.

In response to comments regarding the confusion about when the affected

facility status for Group 1 storage vessels should be determined, we have also made clarifying changes to § 60.5365(e) in the final amendments that clearly specify October 15, 2013, as the deadline for calculating potential volatile organic compound (VOC) emissions from Group 1 storage vessels for determining the affected facility status.

### b. Group 1 and Group 2 Storage Vessel Emission Standards Applicability

We have amended § 60.5395 to more clearly specify that the requirements of the NSPS apply to Group 1 and Group 2 storage vessel *affected* facilities (*i.e.*, those with potential to emit (PTE) 6 or more tpy of VOC, as determined by the methods and dates specified in this final rule). We amended this language in response to several comments expressing confusion about whether the requirements applied to all Group 1 storage vessels or just those with VOC emissions of 6 tpy or greater (*i.e.*, affected facilities).

### c. Group 1 Storage Vessel Affected Facility Emission Standards and Compliance Dates

A key feature of this action is that the final amendments require control of all storage vessel affected facilities constructed since the August 23, 2011, proposal date of the 2012 NSPS. This decision, as summarized in this section and discussed fully in sections IV.A and V.C of this preamble, was based on new information we received that indicates that the projected control device supply appears to be greater than we originally estimated.

In the preamble to the proposed amendments, based on the information then available to the EPA, we developed an estimate of the supply of the type of combustors likely to be used by owners and operators to comply with the control requirements and concluded that control supply would not catch up with its demand under this rule until 2016. To avoid delaying control until such time, we proposed that Group 1 affected facilities notify the EPA of their presence and location by October 15, 2013, but need not comply with the 95 percent reduction requirement unless they experience an emission increase event. However, new information we received since proposal indicates that the combustor suppliers have the manufacturing capacity to meet the demand posed both by this regulation and a variety of state and local regulations that require the installation of control devices. Therefore, in the final amendments, we are not changing the requirement of the 2012 NSPS that

Group 1 storage vessel affected facilities comply with the emission standard requirements. However, we have extended the current compliance deadline. For the reasons discussed in detail in section IV.A, these final amendments require that Group 2 affected facilities comply with the emission standards by April 15, 2014, as we proposed, and that Group 1 affected facilities comply by April 15, 2015.

### d. Alternative 4-tpy Uncontrolled Actual VOC Emission Rate

To help alleviate the control supply shortage believed to exist at the time, we had proposed that affected facilities meet the 95% reduction requirement or an uncontrolled actual VOC emission rate of less than 4 tpy, which would allow control devices to be removed from storage vessel affected sources below that emission rate and relocated to those that have just come on line and have PTE of 6 tpy VOC or more. As mentioned above, new information we received since proposal indicate that the combustor suppliers have the manufacturing capacity to meet the demand posed by this regulation, which in turn would suggest that a supply buffer may no longer be necessary. However, for the reasons provided in section V.C of this preamble, we are finalizing the amendment to the storage vessel emission standards as proposed due to questionable cost effectiveness, the secondary environmental impact and the energy impacts from the continued operation of the combustion control device at an inlet stream concentration of less than about 4 tpy. We were aware but had not highlighted these concerns in the proposed amendment because the perceived supply problem alone necessitated proposing the amendment. The resolution of the supply issue, however, shifts our focus back to these concerns. As explained in more detail in section V.C of this preamble, in light of the questionable cost effectiveness of additional control, the secondary environmental impact and the energy impacts we conclude that the best system of emissions reduction (BSER) for reducing VOC emissions from storage vessel affected facilities is not represented by continued control when their sustained uncontrolled emission rates fall below 4 tpy. We are therefore finalizing the amendment as proposed. Under the final amendments, an owner or operator may comply with the uncontrolled actual VOC emission rate instead of the 95 percent control requirement where it can be demonstrated that, based on records of monthly determinations of actual

<sup>1</sup> The 2012 NSPS proposal was published on August 23, 2011, and the proposed rule for this action was published on April 12, 2013.

emission rate for the 12 consecutive months immediately preceding the demonstration, that the storage vessel affected facility uncontrolled actual VOC emissions for each month during that 12-month period have been below 4 tpy. The final amendments require that the owner or operator re-evaluate the uncontrolled actual VOC emissions on a monthly basis. If the results of the monthly determination show that the uncontrolled actual VOC emission rate is 4 tpy or more, the owner or operator would have 30 days to meet the 95 percent control requirement. We discuss this further in section V.C of this preamble.

#### e. Definition of Storage Vessel Affected Facility

We have finalized the proposed amendments to the definition of “storage vessel affected facility” in the final rule (see § 60.5365(e)) to (1) include the 6 tpy VOC emission threshold and to clarify that a source can take into account any legally and practically enforceable emission limit under federal, state, local or tribal authority when determining the VOC emission rate for purposes of this threshold; (2) clarify that a storage vessel affected facility whose VOC PTE decreases to less than 6 tpy would

remain an affected facility; and (3) to clarify that PTE does not include any vapor recovered and routed to a process.

#### f. Streamlined Compliance Monitoring Provisions

We received several comments regarding the streamlined compliance monitoring provisions; our review of the comments did not result in significant changes since proposal. These compliance monitoring provisions include inspections of covers, closed-vent systems and control devices, performed at least monthly. We believe that these measures are sufficient to ensure that storage vessel affected facilities that have installed controls meet the 95 percent VOC reduction standard. Although the more stringent compliance monitoring provisions in the 2012 NSPS may provide better assurance of compliance, there are significant issues regarding their implementation, which have been raised in several administrative reconsideration petitions. We continue to evaluate the reconsideration issues related to compliance monitoring and intend to complete our reconsideration by the end of 2014.

#### 3. Cost and Benefits

Owners and operators of storage vessel affected facilities are expected to

install and operate the same or similar air pollution control technologies under these final amendments as would have been necessary to meet the previously finalized standards for the oil and natural gas sector under the 2012 NSPS. We project that these amendments will not result in a significant change in costs and or benefits compared to the 2012 NSPS. The final amendments continue to require that all storage vessel affected facilities comply with the emission standards. Although the final amendments may not achieve the same level of emission reductions as the 2012 NSPS, it was necessary to revise the standards due to the limitations of the 2012 rule. The revisions provided in the final amendments were needed for the reasons explained in this preamble, and we believe the rule provides significant benefits. We anticipate that, if there are any changes in costs for these units, such changes would likely be small relative to both the overall costs of the individual projects and the overall costs and benefits of the final rule.

#### B. Does this reconsideration notice apply to me?

Categories and entities potentially affected by today’s notice include:

TABLE 1—INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS ACTION

| Category                            | NAICS code <sup>1</sup>                        | Examples of regulated entities   |
|-------------------------------------|--|--|
| Industry .....                      | 211111<br>211112<br>221210<br>486110<br>486210 | Crude Petroleum and Natural Gas Extraction.<br>Natural Gas Liquid Extraction.<br>Natural Gas Distribution.<br>Pipeline Distribution of Crude Oil.<br>Pipeline Transportation of Natural Gas. |
| Federal government .....            | .....  | Not affected.  |
| State/local/tribal government ..... | .....  | Not affected.  |

<sup>1</sup> North American Industry Classification System.

This table is not intended to be exhaustive, but rather is meant to provide a guide for readers regarding entities likely to be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permitting authority for the entity or your EPA regional representative as listed in 40 CFR 60.4 or 40 CFR 63.13 (General Provisions).

#### C. How do I obtain a copy of this document and other related information?

In addition to being available in the docket, electronic copies of these proposed rules will be available on the Worldwide Web through the Technology Transfer Network (TTN).

Following signature, a copy of each proposed rule will be posted on the TTN’s policy and guidance page for newly proposed or promulgated rules at the following address: <http://www.epa.gov/ttn/oarpg/>. The TTN provides information and technology exchange in various areas of air pollution control.

#### D. Judicial Review

Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by November 22, 2013. Under section 307(d)(7)(B) of the CAA, only an objection to this final rule that was raised with reasonable specificity

during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements. Section 307(d)(7)(B) of the CAA further provides that “[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.” This section also provides a mechanism for us to convene a proceeding for reconsideration, “[i]f the person raising an objection can demonstrate to the EPA that it was

impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.” Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

### III. Summary of Final Amendments

The final amendments include revisions to certain reconsidered aspects of the existing 2012 NSPS which primarily affect the implementation of the regulation of VOC emissions from storage vessels. A summary of the final amendments resulting from our reconsideration are provided in the following paragraphs.

#### A. Initial Notification and Compliance Dates

For Group 1 storage vessel affected facilities, we have amended the 2012 NSPS to require that a notification be submitted with the initial annual report, to inform regulatory agencies of the existence and location of the vessels. In addition, we have amended the 2012 NSPS to require that all Group 1 storage vessel affected facilities comply with the emission standards no later than April 15, 2015, and that all Group 2 storage vessel affected facilities comply no later than April 15, 2014, (or 60 days after startup, whichever is later).

The final amendments also make clarifying changes to § 60.5395 that clearly specify October 15, 2013, as the deadline for calculating potential VOC emissions from Group 1 storage vessels to determine affected facility status.

#### B. Group 1 and Group 2 Storage Vessel Emission Standards Applicability

We have amended § 60.5395 to clearly state that the emission standards apply to Group 1 and Group 2 storage vessel affected facilities (as opposed to all storage vessels).

#### C. Group 1 Storage Vessel Affected Facility Control Requirements

The final amendments retain the requirement in the 2012 NSPS that all

storage vessel affected facilities meet the emission standards. However, the final amendments require that owners and operators of Group 1 storage vessel affected facilities comply with the emission standards by April 15, 2015, and that Group 2 storage vessel affected facilities comply by April 15, 2014.

#### D. Alternative 4-tpy Uncontrolled Actual VOC Emission Rate

We have amended the storage vessel standards to include a sustained uncontrolled actual VOC emission rate of less than 4 tpy. Specifically, an owner or operator may comply with the uncontrolled actual VOC emission rate instead of the 95 percent control requirement where it can be demonstrated that, based on records of monthly emission estimates for the 12 months immediately preceding the demonstration, that the storage vessel affected facility uncontrolled actual VOC emissions estimated each of those months were below 4 tpy. The owner or operator would be required to re-evaluate the uncontrolled actual VOC emissions on a monthly basis. If the results of the monthly determination show that the uncontrolled actual VOC emission rate is 4 tpy or more, the owner or operator would have 30 days to meet the 95 percent control requirement, unless the increase was associated with the fracturing or refracturing of a well feeding the storage vessel affected facility. In that case, 95 percent control would be required as soon as liquids are routed from the fractured or refractured well to the storage vessel. We discuss this further in section V.C of this preamble.

#### E. Definition of Storage Vessel

The final amendments revise the definition of “storage vessel” to clarify that it refers only to vessels containing crude oil, condensate, intermediate hydrocarbon liquids or produced water.

#### F. Definition of Storage Vessel Affected Facility

The final amendments revise the definition of “storage vessel affected facility” (see § 60.5365(e)) to (1) include the 6 tpy VOC emission limit and to clarify that a source can take into account any legally and practically enforceable emission limit under federal, state, local or tribal authority when determining the VOC emission rate for purposes of this threshold; (2) clarify that a storage vessel affected facility whose VOC PTE decreases to less than 6 tpy would remain an affected facility; (3) clarify that “other mechanisms” (or non-federally enforceable mechanisms) must be

legally and practically enforceable under federal, state, local or tribal authority; and (4) clarify that vapor from a storage vessel that is recovered and routed to a process is not to be counted in the PTE for purposes of determining affected facility status.

We also added language at § 60.5395(f) to address storage vessel affected facilities that are removed from service. Owners and operators are required to include a notification in their next annual report that the storage vessel has been taken out of service. If a storage vessel’s return to service is associated with fracturing or refracturing of a well feeding the storage vessel, the storage vessel is subject to control requirements immediately upon returning to service. If, however, the storage vessel’s return to service is not associated with well fracturing or refracturing, the PTE of the storage vessel must be determined within 30 days. If the PTE is 4 tpy or greater, then the storage vessel affected facility must comply with control requirements within 60 days of returning to service.

#### G. Streamlined Compliance Monitoring Provisions

For storage vessels that install controls to meet the 95 percent VOC reduction standard, we have amended the 2012 NSPS to adopt the streamlined compliance monitoring provisions as proposed without significant changes. These compliance monitoring provisions include inspections performed at least monthly of covers, closed-vent systems and control devices. As mentioned above, we continue to evaluate the reconsideration issues raised concerning the compliance monitoring provisions in the 2012 NSPS and intend to complete our reconsideration by the end of 2014.

#### H. Combustion Control Device Manufacturer Test Protocol

We have finalized amendments to the enclosed combustor manufacturer test protocol in the NSPS to align it with a similar protocol in the Oil and Natural Gas National Emission Standards for Hazardous Air Pollutants (NESHAP) (40 CFR 63, subpart HH).

#### I. Annual Report and Compliance Certification

We finalized amendments to allow 90 days after the end of the compliance period for submittal of the annual report and compliance certification.

### IV. Summary of Significant Changes Since Proposal

Section III summarized the amendments to the 2012 NSPS that the

EPA is finalizing in this rule. This section will discuss the key changes the EPA has made since the April 12, 2013, proposal. These changes are the result of the EPA's consideration of the many substantive and thoughtful comments submitted on the proposal and other information received since proposal. We believe that the changes we have made sufficiently address concerns expressed by commenters and improve the clarity of the rule while improving or preserving public health and environmental protection required under the CAA.

#### *A. Group 1 Storage Vessel Affected Facility Control Requirements and Applicability*

We received comments requesting clarification regarding Group 1 storage vessel affected facility control requirement applicability. We also received comments on our estimate of the supply of combustors used to comply with the control requirements and our use of this estimate to determine the requirements for Group 1 storage vessel affected facilities.

To the extent that there was confusion regarding the applicability of Group 1 storage vessel affected facility control requirements, we agree that there is a need for more clarity in the final amendments. To accomplish this, we have included amendments to § 60.5395(b) that make it clear that these requirements apply only to Group 1 storage vessel *affected facilities* (emphasis added) (*i.e.*, those that have the PTE of 6 tpy VOC or more, as determined by the dates specified in the rule, as amended), not all Group 1 storage vessels. Refer to section V.A of this preamble for further discussion of comments and responses pertaining to these changes.

In the proposed amendments, based on the information then available to the EPA, we concluded that control supply would not catch up with its demand under this rule until 2016. To avoid delaying control until such time, we proposed that Group 1 affected facilities notify the EPA of their presence and location by October 15, 2013, but need not comply with the 95 percent reduction requirement unless they experience an emission increase event. Information we received since proposal indicate that the combustor suppliers have the manufacturing capacity to meet the demand posed both by this regulation and a variety of state and local regulations that require the installation of control devices even when accounting for the need to cover Group 1 well in advance of the projected 2016 date. Therefore, in the

final amendments we did not finalize the proposed requirement for Group 1 storage vessel affected facilities to be controlled only if there is an emission increase event. However, as explained in more detail below, we have concerns regarding the projections of potential combustor supply; the pace at which the combustor manufacturing industry can ramp up production and provide the necessary supply in the short-term; and the availability of trained personnel to install these devices on all affected facilities that will have already come on line by the current compliance date of October 15, 2013, as well as the additional approximately 1,100 new affected facilities per month that may need control. Consideration of these factors leads us to conclude that an adjustment to the compliance schedule is warranted.

First, we note that there is a great variability in the projections of potential combustor supply, with one supplier's projection greatly exceeding the other suppliers' projections. Our revised conclusion regarding supply of control devices is largely based on this one supplier's manufacturing capacity, which, if changed, could potentially affect sources' ability to acquire and install control by the current compliance deadline (*i.e.*, October 15, 2013 or 60 days after startup, whichever is later). In light of the above, additional time is needed beyond October 15, 2013, for compliance with the 95 percent reduction requirement. Secondly, we share the concern raised by several commenters that, due to the large number of storage vessel affected facilities, some may not be able to secure the necessary trained personnel to install control devices by the current compliance deadline, especially in the near term. Under the 2012 NSPS, installation of controls would be required by the current compliance date of October 15, 2013, for over 20,000 affected facilities that we estimate will have already come on line since the August 23, 2011, proposal date of the 2012 NSPS, as well as the additional approximately 1,100 new affected facilities per month that will need to install control 60 days after start-up. Lastly, while the overall supply of combustors appears to be adequate, we have concerns about how quickly the combustor manufacturing industry can ramp up production and provide the necessary supply in the short-term. We are doubtful that, even at full current capacity, there would be sufficient control devices to meet the October 15, 2013, compliance date. For the reasons stated above, we decided to take a

phase-in compliance approach that requires the newer affected facilities (which would have higher emissions) to comply first. Accordingly, the final amendments require that Group 2 affected facilities comply with the emission standards by April 15, 2014, as we proposed, and that Group 1 affected facilities comply by April 15, 2015.

Refer to section V.C of this preamble for further discussion regarding these changes.

In addition, we had proposed a list of examples of "events" that would trigger control requirements for Group 1 storage vessel affected facilities. As noted, all Group 1 storage vessel affected facilities must meet the control requirements by April 15, 2015. Therefore, we no longer need to look to events that may be presumed to increase emissions to determine which Group 1 storage vessel affected facilities are subject to control requirements. All proposed provisions related to tracking events have been removed from the final amendments, thereby simplifying the rule and avoiding additional burden and potential confusion.

Refer to section V.A of this preamble for further discussion regarding these changes.

#### *B. Applicability Dates and Compliance Dates*

As discussed in section IV.A of this preamble, the EPA previously concluded that there will be an insufficient supply of combustion control devices for all storage vessel affected facilities until 2016, based on information available at proposal. To avoid postponing control for all storage vessels affected facilities until 2016, we proposed alternative measures for Group 1 and Group 2 storage vessel affected facilities. For Group 1 storage vessel affected facilities, we proposed to require initial notification by October 15, 2013, to inform regulatory agencies of the existence and location of these storage vessels. We also proposed that Group 1 storage vessel affected facilities that undergo an event after April 12, 2013, that could reasonably be expected to lead to an increase in VOC PTE would be subject to control requirements. For Group 2 storage vessel affected facilities, we proposed April 15, 2014, as the compliance date for implementing control requirements.

In response to comments concerning Group 1 storage vessel control requirement applicability and compliance being tied to the "events" listed in § 60.5395(b)(2) and unclear notification and compliance dates for both Group 1 and Group 2 storage vessels, we have made changes to the

final amendments. For Group 1 storage vessels, we are requiring that the owner or operator determine whether the storage vessel is an affected facility no later than October 15, 2013. In the proposed amendments, owners or operators of Group 1 storage vessel affected facilities had to submit an initial notification of these storage vessels by October 15, 2013, as well as an initial annual report by January 15, 2014. In the final amendments, the initial notification may be combined with the initial annual report to reduce the burden of submitting two notifications within a 90-day period. As discussed previously in section IV.A of this preamble, the final amendments retain the requirement in the 2012 NSPS that all Group 1 storage vessel affected facilities comply with emission standards, and specify that compliance must be achieved by April 15, 2015. Therefore, we have removed all provisions related to tracking emission increase events from the final amendments.

For Group 2 storage vessel affected facilities, we are finalizing April 15, 2014, (or 60 days after startup, whichever is later) as the compliance date for implementing control requirements.

Refer to section V.A of this preamble for further discussion of comments and responses regarding these provisions.

### *C. Definition of Storage Vessel Affected Facility*

We proposed to amend the definition of “storage vessel affected facility” to specify that the storage vessel must have a VOC PTE equal to or greater than 6 tpy to be an affected facility and to clarify that the owner or operator can take into account any legally and practically enforceable emission limit in an operating permit, or by another mechanism under state, local or tribal authority, when determining the VOC PTE. The proposed amendment also clarified that a storage vessel affected facility whose potential VOC emissions decrease to less than the threshold of 6 tpy would remain an affected facility. We proposed this amendment to clarify that a storage vessel complying with the proposed uncontrolled actual VOC emission rate would remain an affected facility.

We received comments opposing the revisions to the definition of “storage vessel affected facility” to the extent that it may allow storage vessel operators to account for non-federally enforceable emission limitations that may change in the future and are not enforceable by the EPA in the determination of VOC PTE. Upon

evaluation, we believe that the commenters’ concern arises from language we used in the proposed amendments to § 60.5365(e) to define the storage vessel affected facility which could have been confusing due to the phrase “other mechanisms.” Therefore, the final amendments clarify that “other mechanisms” must be legally and practically enforceable under federal, state, local or tribal authority.

We received public comments that requested that the 6 tpy threshold for storage vessel affected facilities be determined after application of a vapor recovery unit (VRU) (i.e., taking the VRU vapor recovery into account in the emissions determination) for Group 1 and Group 2 storage vessels.

In September 2012, in response to issues brought to the EPA’s attention after the publication of the 2012 NSPS, we clarified that we do not consider VRUs that route recovered gas and vapor back to the process to be control devices, which is consistent with their treatment under 40 CFR part 63, subpart HH.<sup>2</sup>

As long as certain operating requirements are met, we believe it is appropriate to take into account reductions in VOC emissions that result from the recovery of vapor and routing of it to a VRU when determining the VOC PTE from a storage vessel for purposes of determining affected facility status. Routing of vapor through a VRU to a process reduces VOC emissions without secondary environmental impacts (e.g., NO<sub>x</sub> emissions) and is responsible conservation of our energy resources. However, it does not totally eliminate VOC emissions, since the VRU cannot operate 100 percent of the time due to maintenance and repair down time. Our September 28, 2012, letter clarified that the cover and closed vent requirements must be met when VRU is used to meet the 95 percent reduction emission standards. That said, we previously determined that routing of vapor through a cover and properly operated closed-vent system would recover all vapor routed to the system as long as the VRU is operating (i.e., 95 percent of the vapor being routed to a line when operating for 95 percent of the time). In light of the above, as long as the VRU is operated consistent with those requirements, we believe that it is appropriate to exclude 95 percent of the vapor that would otherwise be emitted if not recovered when determining PTE for purposes of determining affected facility status. As a result of this

comment, and based on our prior clarification of this issue, the final amendments to § 60.5365(e) include a provision that “any vapor from the storage vessel that is recovered and routed to a process through a VRU designed and operated as specified in this section is not required to be included in the determination of VOC potential to emit for purposes of determining affected facility status.” Further, we have added language to § 60.5365(e) that provides for this adjustment of PTE as long as (1) the storage vessel is operated in compliance with cover requirements in § 60.5411(b) and the closed-vent system requirements in § 60.5411(c), which has a requirement that the CVS (including the VRU) is operational at least 95 percent of the time, and that the operator maintain records demonstrating compliance with these requirements.

We were concerned that, should a VRU be removed or operated inconsistent with the conditions that were the basis for the PTE reduction following the PTE determination for assessing whether the storage vessel is an affected facility, emissions could increase without the storage vessel being subject to control. To address that possibility, we have added language to § 60.5365(e) such that, in the event of removal of apparatus that recovers and routes vapor to a process or operation that is inconsistent with the conditions for qualifying for the PTE reduction, the owner or operator would be required to determine PTE from the storage vessel within 30 days of such removal or operation. If the PTE is determined to be 6 tpy VOC or more, then the storage vessel would be an affected facility and subject to the control requirements in § 60.5395. We believe this approach will help avoid circumvention of the NSPS.

We received comment that storage vessel affected facilities that are removed from service should cease to be considered affected facilities. Although, for the reasons presented in section V.C of this preamble, we disagree with the commenter and have added language at § 60.5395(f) to address storage vessel affected facilities that are removed from service. Owners and operators are required to include a notification in their next annual report following removal from service that the storage vessel has been taken out of service. If a storage vessel’s return to service is associated with the fracturing or refracturing of a well feeding the storage vessel, the storage vessel is subject to control requirements immediately upon returning to service. If, however, the storage vessel’s return to service is not

<sup>2</sup> Letter from Peter Tsirigotis to Matthew Todd, American Petroleum Institute, September 28, 2012. Docket Item No. EPA-HQ-OAR-2010-0505-4595.

associated with well fracturing or refracturing, the PTE of the storage vessel must be determined within 30 days. If the PTE is 4 tpy or greater, then the storage vessel affected facility must comply with control requirements within 60 days of returning to service.

## V. Summary of Significant Comments and Responses

This section summarizes the significant comments on our proposed amendments and our response thereto.

### A. Major Comments Concerning Applicability Dates and Compliance Dates

1. When do Group 1 storage vessels have to determine emissions?

#### a. Applicability Determination

*Comment:* One commenter requested that the final rule specify the date upon which the determination of the potential VOC emission rate should occur for the purpose of determining whether the storage vessel is an affected facility. According to the commenter, since the EPA has stipulated controls to not be cost effective for storage vessels emitting less than 6 tpy of VOC, and emission rates for storage vessels in the oil production segment tend to decrease as production declines, the commenter believes the determination should be made near to the date upon which controls would be required in order to minimize the potential to install controls on storage vessels for which production decline has rendered controls no longer cost effective. The commenter stated that the proposed revisions would require a determination by October 15, 2013, of whether individual Group 1 storage vessels are affected facilities, and thus October 15, 2013, would be an appropriate date upon which determination of the potential VOC emission rate should be based. According to the commenter, this would remain consistent with the requirement for determining the potential VOC emission rate for Group 2 storage vessels by April 15, 2014 or 30 days after startup, whichever comes later.

The commenter appears to suggest that, like Group 2, Group 1 storage vessel affected facilities located in the natural gas processing and natural gas transmission and storage segments should also be required to determine potential VOC emissions as the trigger for installing control instead of tracking events but to do so by April 15, 2015 (instead of April 15, 2014, proposed for Group 2). According to the commenter, control of the relatively low number of Group 1 storage vessel affected facilities

in these segments could likely be accommodated by this date.

Another commenter pointed out that the proposed reconsideration rule does not establish the date for a Group 1 storage vessel to determine its potential emissions. The commenter also recommended that notifications are only required for tanks that exceed the 6 tpy threshold on October 15, 2013.

Although the publication date of the proposed reconsideration rule was April 12, 2013, the commenter contends that the EPA is not required to, nor should it, establish the emissions determination date for the source category of Group 1 storage vessels on that date. First, given the rapidly declining emissions at storage vessels following initial fracturing, the commenter believes that the expected emissions reduction to be gained from Group 1 storage vessels is likely to be limited. The commenter also states that the proposal date of April 12, 2013, has passed and operators may not be able to accurately back-calculate emissions from that date. Moreover, the commenter contends that emissions from many of these storage vessels will be below the 6 tpy affected source threshold as of October 2013. Given EPA's proposed approach, where storage vessel affected facilities whose emissions drop below 6 tpy remain subject to the standard, the commenter believes that many Group 1 storage vessels will be unnecessarily captured in the source category and required to indefinitely track "events" and perhaps install control devices even if their emissions never again exceed 6 tpy.

*Response:* The final amendments to § 60.5365(e) specify that Group 1 storage vessel affected facilities must determine potential VOC emissions by October 15, 2013, for purposes of determining whether it is an affected facility. For the reasons provided in the Response to Public Comments on the Proposed Amendments document available in the docket, the final amended § 60.5365(e) requires that Group 1 affected facilities submit a notification with the first annual report by January 15, 2014, to inform regulatory agencies of their existence and locations. Determining potential emissions and affected source status early on is not only necessary for Group 1 affected facilities to comply with the notification requirement by January 15, 2014,<sup>3</sup> it will also provide Group 1 affected facilities advance notice and time to secure the necessary

control devices and schedule the installation personnel to perform the installation by April 15, 2015. We reject suggestions by some commenters that emission determination be conducted closer to the deadline for installing control because such delay would frustrate the reason for extending the compliance date for Group 1 affected facilities in the final amendments (i.e., to provide advance notice and time to secure the necessary control devices and schedule the installation personnel to perform installation). Further, the commenters apparently assumed, though incorrectly, that the EPA has concluded that control is not cost effective when VOC emissions are below 6 tpy. No such determination has been made by the EPA or demonstrated by commenters. On the contrary, as discussed in section V.C of this preamble, we have determined that continuing control at uncontrolled emission rates of 4 tpy or above is cost-effective. For the reasons stated above, the final amendments specify October 15, 2013, as the deadline for determining the VOC PTE for Group 1 storage vessels. If the VOC PTE of the Group 1 storage vessel is 6 tpy or greater on October 15, 2013 (or an earlier date if the owner or operator chooses to make the determination prior to October 15, 2013), then the storage vessel is a Group 1 storage vessel affected facility and is subject to the NSPS, which for Group 1 includes the notification requirement by January 15, 2014 (i.e., the date by which the first annual report is due), and the control requirement by April 15, 2015. We are not finalizing the proposed requirement that Group 1 storage vessels track events that may increase the VOC PTE of the storage vessel (refer to section V.A of this preamble) and install control should there be such event; this proposed Group 1 storage vessel requirement is no longer necessary since the final amendments retain the control requirement for all Group 1 storage vessel affected facilities.

One of the commenters expressed concern that Group 1 storage vessels will have to indefinitely track events for these storage vessels and install controls even if VOC emissions do not exceed 6 tpy. The final amendments do not include requirements for owners and operators to track events for Group 1 storage vessels, so this comment is now moot.

The EPA does not believe it is necessary to defer the date at which Group 1 storage vessels located in the natural gas processing and natural gas transmission and storage segments are required to determine emissions. The commenter was suggesting an

<sup>3</sup> We had proposed to require such notification by October 15, 2013, but, in response to comment, we have extended this deadline slightly to January 15, 2014, to allow Group 1 affected facilities to submit the notification with their annual report instead of separately.

alternative to tracking events for storage vessels in these segments, and the final amendments do not include the proposed event tracking provisions.

b. Determination After an Event

*Comment:* One commenter sought clarification that the requirement to re-estimate emissions when there is an event that could reasonably be expected to increase emissions does not apply to non-affected facilities. Two commenters requested that the EPA specify whether the VOC emissions increase for Group 1 storage vessels are to be based on potential or actual emissions. Another commenter suggested that the EPA clarify that the baseline emissions used to determine whether a Group 1 storage vessel experiences an emission increase is the level of emissions immediately prior to the event.

*Response:* In the final amendments, we have removed the requirement to track events for Group 1 storage vessels (refer to section IV.A of this preamble). Therefore, these concerns are now moot.

2. Which Group 1 storage vessels are subject to the initial notification requirements and when are the notifications due?

*Comment:* One commenter states that the definitions for “Group 1 storage vessel” and “storage vessel” in § 60.5430 do not contain the 6 tpy threshold required for a “storage vessel affected facility” under § 60.5365(e). The commenter believes that the EPA’s intent is to only be notified by October 15, 2013, of Group 1 storage vessels that exceed 6 tpy and for operators to monitor these vessels for a subsequent “event” because any storage vessel under 6 tpy is not an affected facility and therefore should not be subject to requirements under the rule. The commenter further states that in § 60.5395, the heading which premises paragraph (b)(1) states, “You must comply with the standards in this section for each storage vessel affected facility.” The commenter asserts that, based on the definition of Group 1 storage vessel and the order of requirements in the above provisions, this requirement could be misinterpreted to mean that all storage vessels between those specified Group 1 dates must be reported, regardless of their PTE.

Another commenter agreed, stating that none of the storage vessel definitions contains the 6 tpy threshold that is included in the § 60.5365(e) definition of “storage vessel affected facility.” The commenter added that, as proposed, § 60.5395(b) seems to include requirements for “Group 1 storage

vessel affected facilities” but the notification and event requirements in proposed § 60.5395(b)(1) and (2) apply to “Group 1 storage vessels” rather than “Group 1 storage vessel affected facilities.” The commenter believes that these requirements may be misinterpreted to apply to all storage vessels containing an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water, regardless of whether their potential emissions meet the 6 tpy threshold.

*Response:* As proposed, § 60.5395(a)(1) states that owners or operators of Group 1 storage vessel affected facilities must comply with paragraph § 60.5395(b). The commenters are correct in their interpretation that the § 60.5395(b) requirements apply only to Group 1 storage vessel affected facilities (i.e., those Group 1 storage vessels with potential VOC emissions of 6 tpy or more), not all Group 1 storage vessels. For clarity, we have moved the affected facility determination requirements from § 60.5395 to § 60.5365(e) and have only requirements that apply to affected facilities now in § 60.5395. The final amendments to § 60.5365(e) clarify our intent.

We also proposed in § 60.5395(b) that owners or operators submit the initial notification of Group 1 storage vessel affected facilities by October 15, 2013. As discussed in section V.A of this preamble, the final amendments require that owners or operators determine the VOC PTE of Group 1 storage vessels by October 15, 2013, and submit the initial notification for Group 1 storage vessel affected facilities, which may be included in the first annual report, by January 15, 2014. The provisions in the final amendments to allow the initial notification of Group 1 storage vessel affected facilities to be submitted with the initial annual report are discussed further in the Response to Public Comments on the Proposed Amendments, available in the docket.

3. Group 1 Storage Vessels That Become Affected Facilities on or After April 12, 2013

*Comment:* One commenter requested that Group 1 storage vessels that experience a triggering event should follow the same schedule for Group 2 storage vessel affected facilities to install controls (by April 15, 2014, or 60 days after startup, whichever is later), except that there could be a hard deadline for Group 1 storage vessel affected facilities along a natural gas pipeline. The commenter pointed to the preamble of the proposed amendments (FR 78 22131) that indicates the EPA’s intent was for Group 1 storage vessel

affected facilities, after a triggering event, to become subject to the same control requirements as those in Group 2, and that these controls would be required no later than 60 days after the event, or April 15, 2014, whichever is later. According to the commenter, this intent was overlooked in the proposed rule amendments.

Two commenters added that the final rule should specify a compliance period for Group 1 storage vessels that originally had potential VOC emissions less than 6 tpy and subsequently experience an event that causes the potential VOC emission rate to meet or exceed 6 tpy. In such cases, the commenters requested that the storage vessel should be required to achieve compliance within 60 days after the event.

Another commenter contended that almost all events that would increase emissions at Group 1 storage vessels are planned or are of a foreseeable nature. The commenter believes that it is feasible for storage vessel operators to install and operate controls simultaneously with the occurrence of such planned events. The commenter added that because emissions from storage vessels are likely to be highest immediately after the events listed in 60.5395(b)(2), it is also essential for protection of public health that controls be implemented as soon as possible.

*Response:* As explained in section IV.A of this preamble, the emission standards remain applicable to all Group 1 affected facilities, as in the 2012 NSPS. Accordingly, we are not finalizing the proposed requirement to track emission increase events and meet the control requirement as a result of such events for Group 1 storage vessels affected facilities. Thus, comments/issues relative to compliance schedule for Group 1 storage vessel affected facilities that experience an event are now moot.

B. Major Comments Concerning the Storage Vessel Affected Facility Definition

*Comment:* In the reconsideration proposal, the EPA proposed to include a VOC emissions threshold of 6 tpy to determine, in part, which storage vessels are affected facilities. Additionally, the proposal allowed operators to take into account requirements under a legally and practically enforceable limit in an operating permit or by other mechanism. One commenter opposed this proposal to the extent that it allows storage vessel operators to account for non-federally enforceable emission limitations. According to the

commenter, the inclusion of non-federally enforceable limitations leads to oversight concerns, and some storage vessels would avoid the NSPS under the proposed threshold.

Additionally, the commenter maintains that the CAA does not allow “synthetic minor” programs to determine applicability of its NSPS regulations. The commenter states that the term “potential to emit” is not found in section 111 of the CAA but is a concept from CAA programs governing expressly defined major sources. As a result, the commenter states that the CAA does not specify that a minor source program run by the states or other entities should be a means to avoid NSPS regulations. According to the commenter, allowing non-federally enforceable standards to exempt sources from NSPS is problematic because states vary widely in the letter, implementation, and enforcement of their synthetic minor programs.

*Response:* In the preamble to the proposed amendments we stated that our intent was that “a source can take into account any legal and practically enforceable emissions limit under federal, state, local or tribal authority when determining the VOC emission rate for purposes of [the 6 tpy] threshold” (78 FR 22132). The language we used in the proposed amendments to § 60.5365(e) to define the storage vessel affected facility allows the owner or operator to “tak[e] into account requirements under a legally and practically enforceable limit in an operating permit or by other mechanism.” We agree with the commenter in so much as the term “other mechanism” may be construed to include non-federally enforceable mechanisms that may have questionable, if any, enforceability provisions. Therefore, the final amendments removed the term “other mechanisms” and revised the provision to allow the owner or operator to “tak[e] into account requirements under a legally and practically enforceable limit in an operating permit or requirement under a Federal, state, local or tribal authority.” We believe that the amendment clarifies only legally and practically enforceable limits can be considered when a source determines its PTE. The EPA’s ability to require Federal enforceability rather than just legal and practical enforceability has been an issue since the DC Circuit decision in *National Mining Assn. v. EPA*, 59 F.3d 1351 (D.C. Cir. 1995). As we have yet to address this remand/vacatur, the agency does not feel at this time that it can dictate Federal enforceability in this context.

Concerning the comments on our use of PTE as an applicability threshold, that was based on our BSER determination made in the 2012 NSPS taking into account the control’s cost effectiveness. Section 111(a)(1) of the CAA specifically identifies cost of achieving reduction as a factor to consider in setting NSPS standards. Nothing in section 111 of the CAA prohibits the EPA from using PTE to reflect our cost consideration in establishing applicability thresholds under section 111. Petitioner failed to explain how the fact that PTE is often used in connection with determining major source status in other provisions of the CAA bars its use for determining applicability status under section 111.

### *C. Major Comments Concerning Storage Vessel Control Requirements*

#### 1. CAA Section 111 Requirements

*Comments:* According to one commenter, section 111 of the CAA is fundamentally a technology-forcing provision that can and should be used to spur aggressive deployment of emission control technologies. The commenter contends that standards are to be set stringently, in order to force the development of new technology. If the EPA must phase in controls, and can otherwise justify such an approach under section 111, the commenter believes the EPA must do so in as limited a way possible, ensuring it does not disrupt incentives which would otherwise expand pollution control development.

The commenter added that the courts have clarified that EPA’s selection of BSER is only limited by cost when industry demonstrates an “inability to adjust itself in a healthy economic fashion to the end sought by the Act as represented by the standards prescribed.” Further, the commenter states that creating deferrals meant to track control equipment supply is not technology-forcing, but market-following. According to the commenter, this ignores the role of standard-setting in incentivizing higher production of control equipment. If EPA cites availability of control devices in deferring or reducing the stringency of an NSPS, the commenter contends that the EPA must offer a strong demonstration that supply constraints render the standard unachievable or prohibitively expensive for the industry as a whole.

*Response:* As explained in section IV.A of this preamble, the EPA proposed to phase in the control requirement for storage vessel affected facilities based on its belief at the time that there would

not be enough control devices to meet the demand of all storage vessel affected facilities by the October 15, 2013, compliance date in the 2012 NSPS or any time in the near future. Although new information received since our proposal indicates that control supply may not be an issue, the EPA is phasing in the storage vessel control requirement in the final amendments for the reasons provided in section IV.A. The phase-in approach has never been based on cost, as the commenter suggests; rather, as indicated in section IV.A of this preamble and in the preamble to the April 12, 2013, reconsideration proposal, the phase-in approach is intended to avoid setting a control requirement that cannot be met due to limitations associated with installing control devices. We do not believe that a standard that ignores such limitations accurately represents the BSER for these affected facilities.

#### 2. Group 1 Requirements

##### a. No Control of Group 1 Storage Vessels

*Comment:* According to one commenter the proposal to exempt Group 1 storage vessels that do not experience increases in emissions rests on questionable projections of estimated current and future supply of control devices, number of storage vessels and decline of oil and natural gas well production. The commenter contends that the EPA cited only unidentified oil and gas industry sources for the asserted level of control device production and provided no justification for forecasted rate of production increase or the production rate plateau of 1,400 units per month. The commenter believes that it is as or more likely that industry would continue to expand control device production in response to the proposed standards, but the proposed delays would slow control manufacture by removing demand. According to the commenter, the EPA could remove its artificial ceiling for control manufacture and accelerate the compliance deadline for Group 2 storage vessels and require most or all Group 1 storage vessels to control emissions by mid-2015. The commenter contended that the EPA must disclose the information underlying these forecasts to allow the public to evaluate their reasonableness and offer comments.

The commenter added that the assumption of one storage vessel per well overestimates the number of new storage vessels and is unjustified. The commenter provided examples of increased use of multi-well pads.

According to the commenter, the EPA uses the fact that oil and gas wells

decline in production over time as justification for exempting Group 1 storage vessels from control requirements. The commenter states that the EPA's forecast of control equipment availability implies no reduction in the number of storage vessels requiring control. This is contrary to the justification given for exempting Group 1 storage vessels from control requirements. According to estimates of a decline in production, the commenter believes that some Group 1 storage vessels could remain a significant source of emissions.

The commenter also contended that the EPA's projections indicate that the supply of existing control devices will be adequate to meet the combined demands of Group 1 and 2 storage vessels by 2016. It is not clear to the commenter what portion of the estimated 20,000 Group 1 storage vessels would ultimately be subject to control, so it is unclear whether subpart OOOO would ever apply to those Group 1 storage vessels with high emissions. Even assuming that emissions from these Group 1 storage vessels generally continue to decline over their remaining lives, the commenter believes that allowing this group of storage vessels to be uncontrolled would result in a large amount of excess emissions relative to the current rule. Conservative estimates by the commenter indicate that the proposal to leave Group 1 storage vessels unregulated would allow over 3 million tpy VOC and 700,000 tpy of methane to be emitted. Taking into account the production decline, the commenter contends that an analysis of the Bakken shale formation indicates that in 2015 storage vessels could still be emitting about 30 percent of their initial emissions. For the reasons given above, the commenter believes that the Group 1 storage vessel exemption is arbitrary and falls short of section 111 mandates that standards of performance reflect BSER.

The commenter further contended that if EPA's analysis indicates a sufficient supply of control devices will be available in the future, then Group 1 storage vessels should be controlled within a reasonable time. The commenter states that a compliance deadline in mid 2015 would provide adequate time for all storage vessels currently subject to the proposed rule to come into compliance. To support this view, the commenter reasons that, if some fraction of the Group 1 storage vessels will no longer have emissions exceeding 6 tpy, the demand for control devices is likely to be lower than the EPA's projections, given the opportunities to manifold closely-

spaced storage vessels, the increased practice of multi-well pads which would share storage vessels, and the EPA's statement in the preamble to the proposed rule that control device manufacturers are likely to be flexible in their ability to meet equipment demand increases in the future.

Another commenter agrees that an alternate compliance schedule is necessary to accommodate the increased demand for control devices but recommended that Group 1 storage vessels that continue to have emissions greater than 6 tpy as of the Group 2 compliance date be required to comply with the control requirements of the rule.

Several commenters express concern that the increased demand for control devices will lead to delays in getting the devices installed and that additional time to comply with the proposed standards is required. One commenter states that the companies that supply the services to comply with the proposed amendments will have their time monopolized by the large oil and gas companies, leading to a shortage of these services for small oil and gas companies. Another commenter similarly expresses concern that small independent producers will experience a shortage of service personnel because the smaller producers have less leverage and buying power than large producers.

*Response:* In the preamble to the proposed amendments, we discussed our rationale for requiring controls only on those Group 1 storage vessel affected facilities that have an event that would likely lead to an increase in the potential to emit VOC (78 FR 22130). Our decision to require controls only on Group 1 storage vessels that experience such an event was based, in large part, on our understanding at that time and the information then available of the supply of combustors that likely would be used to comply with the control requirements. As we understood the combustor manufacturing industry at the time of proposal, the total capacity to produce combustors was approximately 300 units per month, which was based on information from six combustor manufacturers, and that the industry had the capability of increasing that capacity by about 100 units per month.

In response to comments questioning our combustor supply analysis, we reassessed the production capacity of the combustor manufacturing industry. We were able to confirm the data for some of the six manufacturers for which we had data at proposal, which leads us to believe the data as a whole for these manufacturers are reasonable (*i.e.*,

current capacity on average of about 600 units per year for each company). In addition, we were able to identify five additional combustor manufacturers. Of these five, three provided production capacity estimates that were in line with the data we originally had for the six companies, one provided production estimates that were significantly higher than any of the other companies, and one did not provide any data. We averaged the production capacity of the nine similar companies to complete the missing data from the one facility that did not provide data. We then summed the capacity of these 11 companies to determine total current manufacturing capacity of combustors, which was approximately 2,300 units per month.

We also estimated future capacity of the combustor manufacturers based on information provided by the manufacturers for anticipated future increases in production capacity. Based on this information, we estimated future capacity to be as high as approximately 3,000 units per month by April 15, 2015.

The new information described above (for further details, see the memorandum entitled *Combustor Supply and Demand Analysis*, available in the docket) seems to indicate that the combustor suppliers have the manufacturing capacity to meet the demand posed by all (*i.e.*, both Group 1 and Group 2) storage vessel affected facilities required to comply with emission standards in the 2012 NSPS. Therefore, in the final amendments, we continue to require that Group 1 storage vessel affected facilities comply with the emission standard requirements. However, we have extended the current compliance deadline for the reasons stated below.

While the overall projected supply of combustors appears to be adequate, we do not have information as to whether the combustor manufacturers are producing at the projected capacity and, if not, how quickly they can ramp up production to provide the necessary supply for the 2012 NSPS. More importantly, we note that there is a great variability in the projections of combustor supply, where one supplier's projection greatly exceeds the other suppliers' projections and accounts for a significant portion of the supply. To gauge the sensitivity of this one company on the combustor supply, we revisited our supply analysis assuming this company could manufacture combustors only at the highest manufacturing rate reported by any of the other combustor manufacturers. We found that under this scenario the supply of combustors never satisfies the

demand. Thus, this one manufacturer is critical in meeting the overall demand imposed by the 2012 NSPS.

Because this company plays such an important role in meeting the combustor supply, any factor that may delay or slow their production may significantly affect the ability of Group 1 and Group 2 storage vessel affected facilities to achieve compliance by the current compliance deadline in the 2012 NSPS (*i.e.*, October 15, 2013, or 60 days after startup, whichever is later). In light of the above, we believe it is prudent to allow more time for compliance to lift the pressure on the demand of control devices, especially in the short term. Under the 2012 NSPS, compliance is required by October 15, 2013, for an estimated over 20,000 storage vessel affected facilities that will have come on line since the August 23, 2011, (the proposal date of the 2012 NSPS), and an additional 1,100 new affected facilities per month will need to install control 60 days after start-up. Extending the current compliance deadline would allow the market to more easily absorb any events that may cause combustor manufacturing to fall short of the projected production capacity.

In addition to the supply issues described above, commenters raise the concern about not being able to secure the necessary trained personnel to install control devices by the current compliance deadline. In light of the large number of storage vessel affected facilities (estimated over 20,000 by October 15, 2013, with an additional 1,000 per month after that), and given the wide geographic distribution of oil and gas wells across the United States, we believe that the commenters raise a legitimate concern. In particular, we are concerned about how a potential shortage of trained personnel may impact small businesses. The comments we received indicate that larger owners and operators may be able to garner the majority of the available installation personnel due to their greater resources and influence. This may result in a situation where small owners and operators may be placed in a disadvantage to their larger competitors in obtaining installation personnel. If such a situation should occur, the smaller owners and operators may be forced to shut down wells or delay drilling new wells until installation personnel are made available.

In light of the issues described above that may hinder storage vessel affected facilities' ability to comply by the current October 15, 2013, deadline, we do not believe it is reasonable to retain that compliance date. Instead, in the final amendments, we take a phase-in

compliance approach that first addresses newer affected facilities (which would have higher emissions) while assuring that all affected facilities have time to acquire and schedule installation of control. The final amendments establish Group 1 and Group 2 affected facilities, as proposed, where Group 1 are those affected facilities that came on line on or before April 12, 2013, and Group 2 are those that come on line after that date. The final amendments require that Group 2 comply by April 15, 2014 (or 60 days after start-up, whichever is later), a 6-month extension from the current October 15, 2013, deadline for these newer affected facilities. The final amendments require that Group 1 comply by April 15, 2015. Were we to require that both groups comply by April 15, 2014, an estimated 30,000 affected facilities would be competing to acquire and install control by that date; as a result, the 6 month extension would do little to ease the demand for control or skilled personnel to install control should either become an issue in the near future. Also, requiring Group 1 to comply by April 15, 2014 would likely affect Group 2's ability to comply, thus undermining our goal to address the newer storage affected facilities sooner. Lastly, considering the large number of Group 1 affected facilities (which we estimate to be around 19,400), we believe that requiring all Group 1 affected facilities to comply by April 15, 2015 is reasonable. In light of the issues discussed above, we do not expect that these affected facilities would wait until near that deadline and risk noncompliance; rather, we believe that the deadline provides Group 1 advance notice and allows them time to plan for acquiring and scheduling installation of control device by that date. Therefore, in the final amendments, we have specified that all Group 1 storage vessel affected facilities must comply by April 15, 2015, and that Group 2 storage vessel affected facilities must comply by April 15, 2014, or 60 days after startup, whichever is later.

#### b. Clarification of "Events" That May Increase Emissions

*Comment:* Several commenters request that the EPA more clearly define the types of events that would trigger emission increases for Group 1 storage vessels. Seven commenters request that the EPA limit the examples to a finite list of events to remove ambiguity. One commenter states that the "events" that trigger control requirements for Group 1 tanks should be more specific for storage vessels at well sites. According to the commenter, only the events

described in § 60.5395(b)(2)(i) through (iii) of the proposed amendments should be considered triggering events for storage vessels that store reservoir fluids (*i.e.*, at well sites, tank batteries, centralized production facilities).

One commenter requested that the EPA delete the list of examples of events that would increase emissions from the rule language and provide that control requirements are triggered by a change that, in the owner's/operator's judgment, is one that could reasonably be expected to increase VOC emissions.

One commenter suggests that the EPA should clarify the illustrative list of emission-increasing events to include well maintenance activities, such as liquids unloading, various well workover procedures, and any other well maintenance activities which increase production.

*Response:* As discussed in section IV.A of this preamble, the final amendments do not change the requirement in the 2012 NSPS that all storage vessel affected facilities, including those we define as Group 1 affected facilities, to meet the emission standards, although the amendments extend the time for compliance. Since all Group 1 storage vessel affected facilities remain subject to control requirements, there is no need to track events in order to determine which Group 1 storage vessel affected facilities are subject to control requirements, we are not finalizing the proposed provisions related to events in the final amendments.

c. At what emission rate are Group 1 storage vessels that experience an event required to install controls?

*Comment:* Three commenters request that the EPA clarify that Group 1 storage vessels that experience an event that results in an increase in emissions would not be required to install controls if the VOC emissions are below the 6-tpy emission threshold. Two commenters recommend that the 6 tpy threshold be included either in the definition of "Group 1 storage vessels" in § 60.5430 or be explicitly listed as a condition in the requirement under § 60.5395(b)(1).

One commenter states that if emissions from a Group 1 storage vessel affected facility decrease below 6 tpy due to production decline, and it was determined even after a potentially triggering event that emissions had not returned to a level above 6 tpy, the storage vessel should not become subject to Group 2 controls. This view is generally supported by two additional commenters. The commenter refers to § 60.5410(i) which specifies that the

requirement for installing Group 2-level controls is further limited to Group 1 storage vessel affected facilities for which the potential VOC emission rate is 6 tpy or greater after the triggering event. According to the commenter, this 6 tpy threshold is reasonable and appropriate because the EPA concluded in the initial rulemaking that Group 2 controls would not be cost effective for storage vessels emitting less than 6 tpy of VOC.

The commenter adds that based on statements in the preamble (78 FR 22132) and regulatory language in § 60.5410(i), this 6 tpy threshold should be repeated in § 60.5395.

*Response:* As discussed in the previous comment response, the final amendments do not require that Group 1 storage vessels track events. Therefore, these comments are now moot.

### 3. Alternative 4-tpy Uncontrolled Actual VOC Emission Rate

*Comment:* One commenter states that the proposed 4 tpy emission rate, below which controls would not be required, is not BSER and would allow large and unjustifiable emissions increases. According to the commenter, the 95 percent control limit ensures that actual emissions do not exceed 0.2 tpy. Under the proposal, a storage vessel could emit up to 4 tpy indefinitely which is nearly a 3.8 tpy increase above the emissions that would be allowed under the proposed NSPS.

According to the commenter, once control devices are removed, it is more likely that unplanned events will cause significant emissions spikes, further increasing air pollution. For example, if an operator diverts a sudden surge of VOC-containing liquids to a storage vessel for which the operator has removed controls under the proposed mass-based limit, there will be no way to control the resulting emissions spike. The commenter contends that the result is that transient but significant emissions events may become more common at storage vessels using the proposed mass-based limits.

The commenter adds that even if it is assumed that the proposed emission rate would apply for a single year of a given group of storage vessels' lives, the proposal would allow tens of thousands of tons of pollution in that year. If storage vessels operate longer, or decline more slowly after passing the 4 tpy threshold, the amount of additional air emissions will be even higher.

The commenter could find no authority in the CAA for abandoning BSER controls after they have been installed. Having already determined that 95 percent control is BSER, the

commenter states that the EPA provided no justification of the basic premise or the level of the proposed emission rate. The emission rate has not been demonstrated to alleviate any control device shortage, and control devices that would become available due to the emission rate are unlikely to be available for more than a decade after the proposal is finalized.

The commenter contends that the EPA has not shown that the proposed 4 tpy limit corresponds to BSER. To make such a demonstration, the commenter believes, it would be necessary for the EPA to show that control technology has not been demonstrated below the 4 tpy emission rate, meaning that such sources can properly escape control, or that controls are not cost-effective for the industry as a whole below such an emission rate. According to the commenter, controls clearly are available for storage vessels with emissions of 4 tpy and below, so there is no justification for the 4 tpy emission rate on control technology availability grounds. Additionally, the commenter contends that significant VOC emissions can be captured below the proposed threshold. With respect to cost, the commenter believes recent information indicates the annualized cost of storage vessel combustors has declined substantially since subpart OOOO was finalized, significantly enhancing the cost effectiveness of controlling VOC emissions from storage vessels with a PTE of 4 tpy or less. The commenter provides information from a Colorado Department of Public Health and Environment (DPHE) pending rulemaking showing that the annualized combustor costs are around \$15,900/yr, as compared to the previous value of \$19,600/yr, resulting in a cost effectiveness of \$4200/ton at 4 tpy.

Further, the commenter believes that the EPA's control costs overestimate actual costs because the EPA does not take into account savings that would be experienced when controls are shared among storage vessels. As a result, controls are more affordable at lower uncontrolled emissions thresholds. According to the commenter, if the EPA sets a very low emission threshold at which removal and reuse is permissible, more vessels would have to buy new control devices, raising control costs again. Thus, the commenter believes that the EPA's analysis does not compare this variation, or considered the appropriate way to design such a system in light of the variation.

According to the commenter, the EPA states in the proposal that control device manufacture will lag the growing population of storage vessels for a few

years and used this rationale to separately waive controls for Group 1 storage vessels and assure adequate supply of control devices for Group 2 storage vessels. The commenter contends that the EPA further states that allowing affected storage vessels to remove controls under the proposed emission rate would help alleviate the control device shortage. According to the commenter, the EPA's justification that imposing the emission rate is due to uncertainty in their control technology projections and that an additional exemption would "help build a buffer" against this uncertainty is not a cognizable justification for a section 111 standard under the CAA. Further, the commenter does not believe that the EPA has demonstrated either the necessity or appropriateness of the proposed emission rate.

The commenter states that the EPA's concerns about "buffering" technology supply could only justify this departure from the existing standard if the proposed emission rate was also demonstrated to be BSER. According to the commenter, the EPA determined that requiring storage vessels with uncontrolled emissions greater than 6 tpy to achieve 95 percent control of those emissions reflects BSER and is cost effective. The commenter states that if these controls were maintained on a storage vessel as its emissions declined over time, total uncontrolled emissions would continue to fall. But under the proposed emission rate, the commenter contends that emissions could instead jump sharply after the threshold has been crossed. The commenter believes that this reversal in the emissions trend does not reflect BSER because it does not reflect the best demonstrated system of emissions control. According to the commenter, it is instead what happens when BSER controls are removed.

The commenter adds that for the EPA's "buffer" rationale to hold up, operators must be able to cost-effectively and regularly remove used control devices, store them as needed, and transfer them to new storage vessels at a rate which will meaningfully address the control device shortage which the EPA projects. The commenter asserts that the EPA provided no evidence showing operators would be able to do this, or would choose to do so. According to the commenter, storage vessels installed now would in all likelihood not take advantage of the proposal until the 15th year of operation (based on decline curve data provided by the commenter showing that it would take up to 15 years for well production to decline to a level to produce uncontrolled storage vessel emissions of

4 tpy). As a result, the commenter believes that the proposed emission rate would not generate any control devices for transfer for more than a decade, which is long after the EPA estimates adequate control devices will be available. Thus, according to the commenter's analysis, even if control devices could be transferred, such transfers will not buffer a short-term shortage. That shortage, if it exists, will long have passed. Instead, the commenter believes that the proposed emission rate would simply increase air pollution.

The commenter further states that even if the EPA were to actually require operators to build the buffer it desires, the EPA offers no evidence that such a buffer is required indefinitely. Elsewhere in the proposal, the commenter contends, the EPA expresses its view that control device manufacturers will respond to the standards by manufacturing enough control devices to meet the demand imposed by the standards, perhaps after an initial delay. The commenter points out that past experience shows that control devices become available if they are required, and this technology-forcing function is central to how section 111 is intended to work. By instead allowing operators to avoid purchasing new controls, and to remove them from other sources and reuse them, the commenter contends that the EPA permanently limits the market for new control technology, while also allowing excess emissions. The result will be fewer controls in the long-term, and more pollution.

The commenter believes that the Wyoming guidance the EPA mentions in the proposal does not comply with section 111 standards, and contends that the EPA does not offer evidence that it has avoided excess pollution.

Another commenter believes the EPA's choice of an uncontrolled emission rate of 4 tpy as the emission rate is arbitrary and unsupported. The commenter states that the EPA provided no engineering basis, credible health benefit estimate, or other justification for why the 4 tpy emission rate is appropriate.

The commenter also states that the EPA did not provide any justification or analysis demonstrating whether control at 4 tpy is cost effective. The commenter states a cost effectiveness analysis was performed for the 6 tpy applicability threshold, but no such information is provided for the proposed 4 tpy emission rate. The commenter opined that this approach will create situations of great inequity where neighboring facilities may have identical PTE VOC

emissions from a single storage vessel or battery, but very different regulatory burdens. The commenter provides an example where a site with emissions of 5.95 tpy is not subject to any of the notification, reporting, or control requirements of this NSPS. However, a neighboring site with initial production emissions of 6.1 tpy must notify, control, monitor, record, and report to comply with the NSPS. The commenter provides that, as natural production declines occur, after a year of uncontrolled emissions of 3.95 tpy (below the 4 tpy threshold) the additional controls may be removed, but the burden of reporting and recordkeeping continues indefinitely for this site.

The commenter also states that this approach may also drive companies to design their sites in a way that results in increased emissions overall, defeating the goal of the rule itself. For example, according to the commenter, to avoid applicability of the rule as a whole, new sites will likely be designed with more tanks such that no single tank will exceed the 6 tpy applicability threshold but emissions from the larger number of small tanks may have higher overall emissions. The commenter believes that this in turn may exacerbate the shortage of storage tanks that already exists and may further delay production due to the lack of tank availability. Further, the commenter states that the proposed emission rate may lead to hastily constructed tanks that may not be as soundly designed and constructed creating potential concerns for public health and safety as well as air quality.

The commenter contends that the EPA focused on the concept of any planned event that has the potential to increase emissions to or above 4 tpy. However, according to the commenter, this does not account for any potential short-term activities that may trigger reinstallation of controls such as degassing, refilling, inspection or maintenance when emissions in the long-term would otherwise remain below the 4 tpy level. The commenter states that this may result in the delay of appropriate maintenance or other actions that would otherwise be conducted. Building on the example of neighboring sites described above, the commenter states that, if the second site wanted to confirm tank integrity by inspection and cleaning, one-time emissions may raise the annual uncontrolled PTE to over 4 tpy, thus triggering not only reinstallation of controls but all associated monitoring, recordkeeping and reporting requirements.

Several commenters believe that a more appropriate approach would be to allow the removal of controls if a storage vessel has had uncontrolled actual emissions that remain below 6 tpy VOCs for 6 months. The commenters also believe that this initial determination is sufficient and that no further monitoring should be required unless otherwise required under § 60.5395(b)(2). According to the commenters, wells experiencing natural production decline are unlikely to ever experience an increase in emissions, but instead will continue to experience an emissions decrease. The commenters state that this continuing natural decline also supports the contention that 6 months is a sufficient timeframe to monitor emissions before removing controls.

One commenter adds that the proposed approach would require owners/operators to make a one-time commitment of what a tank will contain to the extent that potential emissions will ever exceed 6 tpy. The commenter believes that this inappropriately extends the "once in, always in" policy beyond its previous applications. While it appears that EPA would allow vessels to come in and out of regulation based on whether they contain crude oil, condensate, intermediate hydrocarbon liquids, or produced water at a given time, the commenter contended that the proposal would create a one-time determination of potential emissions that forever captures a tank, regardless of whether it continues to hold the materials that would bring it within regulation. In proposing low emitting storage vessels remain subject to the rule indefinitely, the commenter believes that the EPA is imposing unnecessary and burdensome control, recordkeeping, and reporting requirements on many storage vessels. Should EPA retain this "once in, always in" requirement, the commenter recommends that it should affirm that storage vessels no longer holding VOC-containing liquids or that are taken out of service are no longer an affected source.

Concerning re-installation of controls, several commenters state that the threshold should be 6 tpy instead of 4 tpy based on the EPA's cost effectiveness determination.

*Response:* To help alleviate the control supply shortage believed to exist at the time, we had proposed to amend the storage vessel emission standards to require compliance with either the 95 percent reduction requirement or an uncontrolled actual VOC emission rate of less than 4 tpy, which would allow control devices to be removed from storage vessel affected facilities below

that emission rate and relocated to those that have just come on line and have the VOC PTE of 6 tpy or more. As previously mentioned, new information we received since proposal indicates that the combustor suppliers have the manufacturing capacity to meet the demand posed by this NSPS, which in turn suggests that a supply buffer may no longer be necessary. However, for the reasons stated below, we have amended the storage vessel emission standards as proposed due to the cost effectiveness of continuing control and the increasing environmental disbenefits and energy impacts from the continued operation of the combustion control device at an inlet stream VOC concentration of less than 4 tpy.

As shown in the memo entitled *Cost and Secondary Environmental Impacts Associated with Controlling Storage Vessels under the Oil and Natural Gas Sector New Source Performance Standards*, available in the docket, our analysis indicates that the cost of controls for each storage vessel affected facility at a VOC emission rate of 4 tpy is approximately \$5,100 per ton. This cost increases to approximately \$6,900 per ton at an emission rate of 3 tpy, and to approximately \$10,000 per ton at 2 tpy. For comparison, we note that, in a previous NSPS rulemaking [72 FR 64864 (November 16, 2007)], we had concluded that a VOC control option was not cost effective at a cost of \$5,700/ton, which calls into question the cost effectiveness of continuing control of storage vessel affected facilities at an emission rate below 4 tpy.

One commenter recommends that, if we retain the uncontrolled VOC emission rate, it should be set no higher than 0.3 tpy (representing the emission rate of a 6 tpy VOC emission stream controlled at 95 percent) rather than 4 tpy. We emphasize that the 4 tpy uncontrolled VOC emission rate is not based on equivalency to the 95 percent reduction, nor do we think such conversion to an emission limit is appropriate considering it would result in a range of emission limits depending on the baseline uncontrolled emissions. The 0.3 tpy suggested by the commenter only represents the limit for sources with PTE of 6 tpy while those with higher PTE would have higher limits that equate to 95 percent reduction. Further, at the commenter's suggested emission rate of 0.3 tpy, the cost would be approximately \$70,000 per ton of emission reduction, which we do not consider to be cost effective.

One commenter questioned the basis of our control cost estimates and pointed to a recent update by Colorado

DPHE, an earlier version of which we used as the basis for our cost estimate, which indicated a lower cost of control. We point out that the lower cost in the revised Colorado analysis is primarily due to a lower cost (by approximately half) of the fuel for the pilot flame. Our assumption is that gas prices will remain relatively stable over time and question whether this lower fuel cost is applicable to all areas of the U.S. outside Colorado and whether such costs will be maintained in the long term. We also point out that the Colorado analysis did not include costs for a surveillance system or data management system, which were included in our analysis. Finally, the Colorado analysis showed an increase in capital cost of about \$2,000 over the capital costs in our analysis. For these reasons, we believe our costs, if anything, may underestimate costs rather than overestimate as the commenter claims. We made no changes to our cost analysis based on this comment.

Another commenter suggested that our cost estimate overestimates costs because we did not take into account savings that would result when control devices are shared by storage vessels. The comment is incorrect. In our analysis, we assumed that there would be one control device used per well site. We also acknowledged that there are likely multiple storage vessels per well site, all of which would be routed to a single control device.

In addition to cost effectiveness, we evaluated the secondary impact from continuing control below 4 tpy. As shown in the memo entitled *Cost and Secondary Environmental Impacts Associated with Controlling Storage Vessels under the Oil and Natural Gas Sector New Source Performance Standards*, available in the docket, on a nationwide basis, the combustion of the pilot flame fuel and the combustion of the VOC vapor in the storage vessel vent stream will result in increases in NO<sub>x</sub>, CO, CO<sub>2</sub>, and methane emissions, most notably CO<sub>2</sub> emissions. We estimate that the operation of each combustion control device on a VOC storage vessel vent stream flow rate of 3 tpy will result in the following secondary emissions: 54 tpy of carbon dioxide (CO<sub>2</sub>), 0.14 tpy of carbon monoxide (CO) and 0.028 tpy of nitrogen oxides (NO<sub>x</sub>).

We also evaluated the energy impacts associated with continuing control below 4 tpy. The discussion here for secondary energy and environmental impacts is on the basis of one combustion control device. As of the date of publication of this preamble, we estimate that there are approximately

20,000 storage vessel affected facilities that require combustion control devices and that the number is projected to increase by about 11,000 per year. We also estimate that on average, from 2014 through 2020, approximately 8,000 storage vessel affected facilities per year will experience VOC emissions decline to below 4 tpy. Our information indicates that the fuel usage (primarily methane) for the pilot flame on a single combustion control device may be approximately 12 tpy (based on a fuel flow rate of 70 scf/hr for the pilot flame, or about 613 Mcf per year). Thus, at a storage vessel VOC emission rate of 4 tpy, a combustion device would have to combust an amount of fuel gas about 3 times the mass of the VOC vapor from the tank being controlled simply to keep the pilot flame operating. This ratio increases even further for VOC emission rates less than 4 tpy. Considering the nationwide energy impact of continuing to operate the pilot flame of an extremely large number of combustion control devices for VOC flow rates far lower than the pilot flame fuel flow rates, we question whether this is a responsible use of our energy resources.

In light of the cost-effectiveness, the secondary environmental impacts and the energy impacts, we have concluded that the BSER for reducing VOC emissions from storage vessel affected facilities is not represented by continued control when their sustained uncontrolled emission rates fall below 4 tpy. For the reason stated above, we have amended the storage vessel emission standards to require that, at all times, affected facilities comply with either the 95 percent reduction requirement or an uncontrolled actual VOC emission rate of less than 4, as proposed. Under the final amendments, an owner or operator may comply with the uncontrolled VOC emission rate instead of the 95 percent control requirement where it can be demonstrated that, based on records of monthly determinations of VOC emissions for the 12 consecutive months immediately preceding the demonstration, that the storage vessel affected facility uncontrolled actual VOC emissions each month during that 12-month period are below 4 tpy. The final amendments require that the owner or operator re-evaluate the uncontrolled VOC emissions on a monthly basis. For the same reasons discussed below in this section in our response to comments concerning storage vessels that are taken out of service, the 4 tpy alternative emission standards in the final amendments at § 60.5395(d)(2) require control to be

applied in either of two cases. First, if a well feeding a storage vessel affected facility undergoes fracturing or refracturing, the owner or operator must comply with the 95 percent reduction requirements in § 60.5395(d)(1) as soon as liquids from the well following fracturing or refracturing are routed to the storage vessel affected facility, regardless of the last monthly emissions determination. On the other hand, if a monthly emissions determination required in § 60.5395(d)(2) indicates that VOC emissions from a storage vessel affected facility have increased to 4 tpy or greater, and the increase is not associated with fracturing or refracturing of a well feeding the storage vessel, then the owner or operator must apply 95 percent control according to § 60.5395(d)(1) within 30 days of the monthly calculation.

One commenter stated that the 4 tpy uncontrolled VOC emission rate does not represent BSER. As previously explained, due to the cost effectiveness, the secondary environmental impact and energy impact, the 4 tpy emission rate likely represents a point below which continued control ceases to be the BSER for reducing VOC emissions from storage vessel affected facilities.

One commenter asserted that some maintenance events at neighboring sites may cause short-term spikes in VOC emissions of 4 tpy or more, thereby triggering control for at least another 12 months. As discussed above, the final amendments provide for two alternative emission standards, either of which must be met at all times. However, the 2012 NSPS contains affirmative defense provisions that may be considered in cases where malfunctions occur causing emissions to exceed the standard. Planned activities are expected to be conducted in compliance with the emission standards.

We also made changes to the final amendments to clarify our intent that the uncontrolled VOC emission rate is available for all storage vessel affected facilities. In the proposed amendments, § 60.5395(d)(2) conditionally allowed the owner or operator to meet an uncontrolled actual VOC emission rate so long as the monthly actual uncontrolled emission rate remained below 4 tpy. However, in the proposed amendments we included the following qualifier in § 60.5395(d)(2): “provided that you have been using a control device and have demonstrated that the VOC emissions have been below 4 tpy without considering control for at least the 12 consecutive months immediately preceding the demonstration.”

We now believe that this qualifier places undue restriction on the use of

the emission rate. Under the qualifier, Group 1 affected facilities that had uncontrolled emission below 4 tpy by the amended compliance date would not be able to avail itself of this option. We see no reason for such limitation and have therefore removed the qualifier language in the final amendments.

Concerning a commenter's assertion that one storage vessel with PTE of just over 6 tpy would be subject to control, recordkeeping and reporting requirements but that a storage vessel with PTE of just under 6 tpy would not be subject to any requirements, we respond that applicability thresholds exist for many rules and that subpart OOOO is not unique in that regard. With regard to the assertion that owners and operators may try to circumvent the NSPS by installing multiple small throughput storage vessels to keep individual tank emissions below the 6 tpy threshold, this comment pertains to the 2012 NSPS and not the proposed reconsideration, since changes to that threshold were not proposed. In response to the commenter's concern about transient emissions above 4 tpy that are caused by operator actions, storage vessels that increase emissions to at least the 4 tpy actual VOC emissions limit are subject to the control requirements. Owners and operators must ensure that they are aware of emissions increases that may occur after an activity and take appropriate action to control those emissions as required by the NSPS. With regard to uncontrolled VOC emissions of 6 tpy for 6 consecutive months being a more appropriate uncontrolled actual VOC emission limit, we have explained in section IV.B our rationale for the 4 tpy emission limit. In addition, we have never determined that control below 6 tpy is not cost-effective; to the contrary, we have determined that control at 4 tpy and above is cost-effective. Furthermore, we are concerned that setting the emission limit to allow removal of control if uncontrolled emissions are below 6 tpy for 6 consecutive months does not provide for reasonable certainty that emissions would not be controlled to the maximum extent possible that is still cost-effective and that does not create undue secondary impacts. Moreover, a full 12 months of sustained monthly uncontrolled actual emissions estimates below the 4 tpy limit will reasonably ensure that emissions fluctuations will not cause excursions above the limit, requiring controls to be reapplied. In the context of once in always in, the EPA has not extended this policy by providing that

storage vessel affected facilities that subsequently reduce PTE to below 6 tpy remain affected facilities. The EPA historically has never let facilities in and out of affected facility status and is consistent in subpart OOOO. Having storage vessels remain affected facilities when emissions decline allows regulatory agencies to track emissions of these storage vessels and to monitor compliance if they increase. Further, operators are not restricted as to what they store in a tank; if the contents are crude oil, condensate, hydrocarbon intermediates or produced water, and the storage vessel has PTE of at least 6 tpy, it is a storage vessel affected facility and subject to subpart OOOO. In addition, in response to a comment that a tank is forever an affected facility regardless of its future contents, we disagree. If a tank ceases to be used for a purpose other than to hold an accumulation of any of the materials listed above, then it ceases to fit the definition of storage vessel under subpart OOOO and is therefore no longer an affected facility subject to the standards.

One commenter requests that we clarify that a storage vessel affected facility that is taken out of service ceases to be an affected facility under the NSPS. On the contrary, the storage vessel remains to be an affected facility, although we realize that there may be undue burden associated with control and monitoring, recordkeeping and reporting requirements for storage vessels that are not in service. However, if a storage vessel affected facility that is out of service is returned to service, an emissions determination is necessary to see whether it can continue compliance with the 4 tpy uncontrolled emission rate or it must now install control to meet the 95 percent reduction requirement. In the 2012 NSPS, we concluded that we need to provide sufficient time for determining emissions and, if necessary, installing control. See 77 FR 49490, at 49526 (August 16, 2012). Accordingly, the 2012 NSPS provide 30 days for determining emissions and an additional 30 days to make control operational. We believe that a similar time frame is needed for a dormant storage vessel returned to service to demonstrate continued compliance with the 4 tpy uncontrolled emission rate or to install control to meet the 95 percent reduction requirement. After all, these storage vessels may very well have very low emissions upon startup and should not be forced to install control immediately without an opportunity to demonstrate that they can continue

compliance with the 4 tpy uncontrolled emission rate. However, we are concerned that a dormant storage vessel that is returned to service associated with the fracturing or refracturing of a well feeding it is likely to release substantial amounts of vapor if not controlled right away due to the initially high liquid flow and flash emissions from freshly fractured or refractured wells. We also believe that potential emissions associated with fracturing and refracturing of a well are unlikely to meet the 4 tpy uncontrolled emission rate. We are therefore not providing the time period described above for storage vessels returned to service associated with fracturing or refracturing of a well. In light of these considerations, we have added language at § 60.5395(f) of the final amendments to address storage vessel affected facilities that are removed from service. After taking a storage vessel affected facility out of service, owners or operators are required provide notification in their next annual report that the storage vessel has been taken out of service. If a storage vessel's return to service is associated with fracturing or refracturing of a well feeding the storage vessel, the storage vessel must comply with control requirements in § 60.5395(d) immediately upon returning to service. If, however, the storage vessel's return to service is not associated with well fracturing or refracturing, the PTE of the storage vessel must be determined within 30 days. If the PTE is 4 tpy or greater, then the storage vessel affected facility must comply with control requirements in § 60.5395(d) within 60 days of being returned to service.

#### *D. Major Comments Concerning Ongoing Compliance Requirements*

##### **1. Burden of Monitoring and Testing Requirements**

*Comment:* One commenter states that the monitoring and testing requirements for storage vessels in the 2012 NSPS are overly complex and stringent given the large number of units affected and the remoteness of some wells sites. The commenter supports the EPA's intent to reduce the monitoring and testing burden on affected sources by means of the streamlined monitoring provisions in the proposed amendments. However, the commenter contends that many of these "streamlined" provisions remain overly burdensome due to the large number of affected vessels and the remoteness of the well sites at which they are installed. In particular, the commenter believes that § 60.5416 should only require an annual auditory,

visual and olfactory (AVO) inspection of the vessel and control device, and that Method 22 observation should be required only if smoke is observed by the operator.

Another commenter states that, as proposed, the monthly inspections and obligations for prompt repairs can be accomplished with existing personnel and not add significantly to the cost of compliance while ensuring that the required emissions controls are operating properly.

*Response:* In this action, the EPA is finalizing the streamlined compliance monitoring requirements, as proposed, with minor clarifying changes. As we stated in the preamble to the proposed amendments (78 FR 22134), we will continue to fully evaluate the compliance demonstration and monitoring issues. We intend to complete our reconsideration of these requirements, along with other issues for which we intend to grant reconsideration, by the end of 2014.

In response to the comment stating that the streamlined monitoring provisions are still too burdensome, the EPA has re-evaluated the Method 22 requirements in the proposed reconsideration rule and continues to believe that an observation time of fifteen minutes with a one minute smoke allowance for all combustion controls is appropriate. For manufacturer-tested enclosed combustors, the required frequency of the Method 22 test is quarterly. For all other combustion controls, the required frequency of the Method 22 test is monthly. A "smoke/no smoke" determination is essentially what Method 22 requires. Method 22 simply requires the observer to note how long emissions were seen over a period of time (15 minutes for monthly testing, 1 hour for quarterly testing). If smoke is seen for more than a specified amount of time, it is a violation. We have information indicating that personnel are on-site at each well at least monthly. Since the Method 22 observation does not require highly trained personnel to conduct the test, we believe the personnel already on-site are capable of performing the test. Thus, we do not agree with the commenter that the monitoring provisions in the reconsideration proposal would result in undue burden, or that they are inappropriate considering the remoteness of the well sites. We have therefore finalized those provisions.

##### **2. Streamlined Compliance Monitoring**

*Comment:* Several commenters commented on the proposed streamlined compliance monitoring

requirements for closed vent systems and control devices installed to reduce VOC emissions from storage vessels. Four commenters request that the EPA make the streamlined compliance monitoring requirements permanent. One of these commenters states that monitoring requirements imposed by the 2012 NSPS would be particularly onerous for small, independent operators that cannot afford the number of employees-hours required to travel to distant well sites with such high frequency. According to the commenters, their suggested changes to the proposed amendments would meet the goal of proper monitoring of emissions without requiring such a large amount of human and capital resources. Two commenters oppose the streamlined monitoring requirements and request that the EPA reinstate the more rigorous requirements in the 2012 NSPS. One commenter states that portions of the streamlined monitoring requirements are unnecessary and burdensome.

Another commenter expresses concern that the proposed amendments replace instrument-based monitoring of control devices and closed vent systems (CVS) with less reliable methods. Effective monitoring of the integrity and performance of emission control devices is vital to ensuring compliance with emissions limitations under section 111, according to the commenter, and is evident in the radically revised number of storage vessels with emissions exceeding 6 tpy.

The commenter pointed out that the current subpart OOOO requirements for continuous parametric monitoring system (CPMS) and Method 22 testing, as well as Method 21 monitoring, build on other long-standing EPA regulations, including storage vessel standards under subpart HH and the NSPS for volatile organic liquid storage vessels, subpart Kb. The commenter added that they are also consistent with the proposed Uniform Standards for CVS and storage vessels. According to the commenter, the EPA went in the wrong direction by proposing to eliminate the CPMS requirements, shorten the Method 22 visible emissions testing, and allow operators to inspect CVS using OVA inspections.

The commenter states that previous agency studies indicate that instrument-based monitoring is cost-effective and more sensitive than sensory inspections, suggesting that if anything subpart OOOO should extend such monitoring to all roof fittings that could emit VOC. The commenter contends that the EPA provided no information in the proposed reconsideration that questions

the findings of the Uniform Standards on relative effectiveness or cost of instrument monitoring of storage vessel components. The commenter also points to the Fort Berthold Indian Reservation Federal Implementation Plan (FBIR FIP) where the EPA required continuous parametric monitoring of enclosed combustors, utility flares, and other control devices. Also in the FBIR FIP according to the commenter, the EPA rejected reducing the Method 22 observation period to 1 hour to mitigate burdensome compliance costs as an option that was not suitable. The commenter does not believe the EPA provided specific information to warrant a different approach.

The commenter adds that the EPA did not demonstrate that the proposed changes are necessary to mitigate cost and burdens raised by industry. The commenter states that the EPA cited general personnel and infrastructure concerns in the preamble but did not provide an analysis of the anticipated costs of implementing monitoring. In proposing to determine that the current monitoring requirements were infeasible, the commenter contends that the EPA did not indicate whether it took into account the reduced monitoring costs associated with the Group 1 exemption for storage vessels that do not undergo an emissions-increasing event and the deferral of the Group 2 storage vessel compliance date.

Further, the commenter states that there is no indication as to whether Method 21 inspections, CPMS and full Method 22 testing would be infeasible at storage vessels at or near manned facilities. As a result, the commenter contends that the EPA's streamlined monitoring requirements appear to be overly broad as well as inadequately supported.

Another commenter adds that periodic monitoring of closed-vent systems and control devices is a very important part of controlling the air quality in the nation. The commenter asserts that most well sites are located far away from cities and sometimes it can be bothersome to drive back and forth in order to accomplish testing and monitoring processes. The commenter believes that the best way to encourage operators to use the appropriate models is by not letting them install equipment without proper documentation, and to fine them, or even stop onsite operations in case they do not obey the requirement.

*Response:* In today's action, the EPA is finalizing the streamlined compliance monitoring requirements, as proposed, with minor clarifying changes. In finalizing these provisions, the EPA has

made no determination on the cost or feasibility of the compliance monitoring provisions in the 2012 NSPS, as some commenters appear to suggest. We also agree with the commenters about those provisions' reliability and effectiveness. However, as we explained in the preamble to the proposed amendments (78 FR 22134), significant issues regarding their implementation have been raised in the administrative petitions for reconsideration of the 2012 NSPS, which we are continuing to evaluate. We intend to complete our reconsideration of these requirements, along with any other issues for which we intend to grant reconsideration, by the end of 2014. We do not believe it is appropriate to impose these monitoring requirements on affected facilities while we are still evaluating their implementation issues. However, to avoid delaying compliance, we have proposed and are finalizing in today's action a set of streamlined compliance monitoring requirements. We believe that they are adequate to assure compliance. Several commenters urge us to retain the monitoring provisions in the 2012 NSPS for the reasons summarized above, but none of them claim that the streamlined provisions laid out in the proposal are inadequate to assure compliance. In light of the above, we are finalizing the streamlined compliance monitoring requirements, as proposed, with minor clarifying changes.

#### *E. Major Comments Concerning Design Requirements*

*Comment:* Three commenters support the inclusion of design parameters in the final amendments. One commenter states that design parameters are important to reduce the possibility for an unintended loophole in the rule language which might result in potentially significant emissions. The commenter adds that their agency has observed the highest emission rates corresponding to flash VOC emissions while liquids are being added to an existing storage vessel and believes that this is common at well sites, where the natural formation results in high pressure liquids which are then routed through the separator to a storage vessel that is at or around atmospheric pressure. The commenter contends that if a closed cover is not maintained during such liquids addition, a large percentage of the annual emissions could vent out of a pressure relief valve or thief hatch, rather than being routed to a control device.

Another commenter supported this view and states that the final amendments must ensure that vapor

collection systems and control devices will reduce 95 percent of VOCs during all phases of operation, including when air pressure significantly increases during loading. The commenter contends that where systems are currently in place to control condensate tank emissions at natural gas exploration and production sites, they are sometimes inadequate for controlling the high-pressure vapor produced when the tanks receive a slug of condensate. The commenter points out that the EPA has noted in this rulemaking that the feasibility of meeting the storage-vessel standards with a vapor recovery unit may be affected by "fluctuations in vapor loading caused by surges in throughput and flash emissions from the storage vessel." The commenter provides several possible approaches to assure equipment is properly designed to meet the storage vessel standards.

One of the commenters adds that the inclusion of design requirements would provide enforceable provisions that would assist permitting agencies in regulating sources.

Eight commenters generally opposed the inclusion of design requirements in the final amendments. One commenter states that the EPA has already established BSER for affected storage vessels as the reduction of VOC emissions by 95 percent or greater and established work practice standards for the closed vent system to any control device or vapor recovery system. According to the commenter, these work practice standards address potential equipment design and maintenance issues that could affect the proper collection of and destruction or recovery of VOC emissions from storage vessels. The commenter asserts that a storage vessel, closed vent system, and control device that are not properly designed would not be able to meet the work practice standards and minimum control device destruction efficiency already required in the proposed rule; therefore, any process design standards would only be duplicative requirements and result in more burden to industry and state agencies responsible for compliance.

The commenter maintains that the EPA should not attempt to expand any NSPS regulations by specifically regulating the process or mechanical design of storage vessels or the closed vent system to control devices or vapor recovery systems. The commenter further states that owners and operators are responsible for designing process equipment based on individual site process conditions and safety considerations. According to the

commenter, it would be a massive undertaking for the EPA to attempt to write regulations regarding the specific “proper” design of storage vessels and closed vent systems. The commenter expresses doubt that the EPA could provide enough flexibility in process and mechanical design of equipment regulations to cover all the unique process conditions at individual facilities.

One commenter adds that over-prescriptive regulations on storage vessel design could stifle technological innovation, including new tank designs that emit less than current storage vessels. Additionally, according to the commenter, storage vessels are specifically designed in accordance with federal safety standards and these specifications should not be potentially compromised under any circumstances. Further, the commenter states that it is in the best economic interest of all operators to procure properly designed equipment and operate storage vessels efficiently. Lastly, the commenter states that, under the CAA, operators already have a general duty requirement to “maintain and operate any affected facility including air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions.”

One commenter does not believe that the EPA has the authority under NSPS to require a particular technology or design as a performance standard. The commenter contends that the EPA should not mandate a particular technology, but rather allow companies to choose the technology to best meet the emission standard.

One state agency commenter believes that specifying design requirements in regulations will stifle innovation and create a plateau for new products. The commenter believes that such restrictions will not allow for economic or technological creation of new methods or equipment. The commenter further states that, as the industry grows and changes, so too should the facilities and equipment associated with it, but prescriptive design requirements would not allow this to happen. Also, according to the commenter, due to high variability of materials and situations in the field it seems illogical and inappropriate to deem only certain designs of facilities and equipment acceptable or not. The commenter contends that design requirements specified by rule could cause certain facilities or regions to be unable to implement engineering solutions necessary to account for site- or region-specific conditions.

*Response:* The EPA appreciates the information provided by these commenters in response to the EPA’s solicitation of comment on whether the NSPS should include design requirements for storage vessels, closed vent system and control devices. In the preamble to the proposed rule, we had solicited comment on whether the EPA should require that storage vessel installations and associated controls be sized and designed properly for specific applications to minimize excess emissions due to improperly sized and designed storage vessels or control systems. We did not solicit comment on whether the EPA should require specific technology or design parameters. Accordingly, because the reconsideration proposal did not include any specific design requirements for storage vessels and associated closed vent systems and control device, no such requirement is included in the final amendments.

#### *F. Major Comments Concerning Impacts*

*Comment:* One commenter contends that the EPA failed to assess the air quality impacts of its proposed amendments and the EPA must provide further analysis of air quality impacts to support that the proposed revised standards is BSER. According to the commenter’s analysis, Group 1 storage vessels that do not experience an event that would increase emissions would result in an increase from the final NSPS in VOC emissions of over 3 million tpy and methane emissions of over 700,000 tpy. In addition, the commenter states that the six-month delay of the compliance date for Group 2 storage vessels results in an increase of 450,000 tpy of VOC emissions and 100,000 tpy of methane emissions. The commenter added that the removal of a control device from sources whose uncontrolled emissions drop below 4 tpy would result in an emission increase of 3.8 tpy VOC per vessel. Assuming that the 11,600 new vessels the EPA projects would qualify for the uncontrolled actual VOC emission rate, emissions would increase by 23,000 tpy VOC and 5,000 tpy methane. The commenter also contends that the removal of the control device would result in sources left uncontrolled during any unplanned events that would generate significant emissions. Additionally, the commenter states that using their decline curve analysis, new sources would not qualify for uncontrolled actual VOC emission rate for at least 14 years, and the increase in pollution is not justified by the EPA’s control device availability concerns.

*Response:* As we discussed in section IV.A of this preamble, we are not finalizing our proposal to subject only those Group 1 storage vessels that experience an event to the emission standards. Thus, all Group 1 storage vessel affected facilities will be subject to the emission standards, as required under the 2012 NSPS. We believe this addresses the commenters’ concerns about any increase in emissions based on our proposal to require Group 1 to control only if there is a subsequent emission increase event. The commenter is also concerned with emission increase from delayed compliance. However, we believe that the extended deadlines in the final amendments are justified for the reasons stated in section IV.A, and we are phasing the compliance deadlines to address facilities with projected higher emissions more quickly.

We have also provided further analysis of air quality impacts, as the commenter suggests, as well as the cost effectiveness and energy impact associated with the proposed uncontrolled emission rate of less than 4 tpy. As discussed in more detail in section V.C of this preamble, 4 tpy likely represents a point below which control ceases to be the BSER for reducing VOC emissions from storage vessel affected facilities due to the cost effectiveness, the secondary environmental impact and energy impact.

#### **VI. Technical Corrections and Clarifications**

The EPA is finalizing corrections to recordkeeping and reporting requirements for all affected facilities. In addition, the final amendments include corrections that are editorial in nature, such as typographical and grammatical errors, as well as incorrect cross-references.

#### **VII. Impacts of These Final Amendments**

Our analysis shows that owners and operators of storage vessel affected facilities would choose to install and operate the same or similar air pollution control technologies under the proposed standards as would have been necessary to meet the previously finalized standards. We project that this rule will result in no significant change in costs, emission reductions, or benefits. Even if there were changes in costs for these units, such changes would likely be small relative to both the overall costs of the individual projects and the overall costs and benefits of the final rule. Since we believe that owners and operators would put on the same

controls for this revised final rule that they would have for the original final rule, there should not be any incremental costs related to this proposed revision.

#### *A. What are the air impacts?*

We believe that owners and operators of storage vessel affected facilities will install the same or similar control technologies to comply with the revised standards finalized in this action as they would have installed to comply with the previously finalized standards. Accordingly, we believe that this final rule will not result in significant changes in emissions of any of the regulated pollutants.

#### *B. What are the energy impacts?*

This final rule is not anticipated to have an effect on the supply, distribution, or use of energy. As previously stated, we believe that owners and operators of storage vessel affected facilities would install the same or similar control technologies as they would have installed to comply with the previously finalized standards.

#### *C. What are the compliance costs?*

We believe there will be no significant change in compliance costs as a result of this final rule because owners and operators of storage vessel affected facilities would install the same or similar control technologies as they would have installed to comply with the previously finalized standards. However, we note that there likely will be reductions of costs imposed on owners and operators associated with the streamlined compliance monitoring procedures provided in the final amendments.

#### *D. What are the economic and employment impacts?*

Because we expect that owners and operators of storage vessel affected facilities would install the same or similar control technologies to meet the standards finalized in this action as they would have chosen to comply with the previously finalized standards, we do not anticipate that this final rule will result in significant changes in emissions, energy impacts, costs, benefits, or economic impacts. Likewise, we believe this rule will not have any impacts on the price of electricity, employment or labor markets, or the U.S. economy.

#### *E. What are the benefits of the proposed standards?*

As previously stated, the EPA anticipates the oil and natural gas sector will not incur significant compliance

costs or savings as a result of this rule and we do not anticipate any significant emission changes resulting from this rule. Therefore, there are no direct monetized benefits or disbenefits associated with this rule.

### **VIII. Statutory and Executive Order Reviews**

#### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

An RIA was prepared for the April 2012 NSPS and can be found at: [http://www.epa.gov/ttn/ecas/regdata/RIAs/oil\\_natural\\_gas\\_final\\_neshap\\_nspc\\_ria.pdf](http://www.epa.gov/ttn/ecas/regdata/RIAs/oil_natural_gas_final_neshap_nspc_ria.pdf). This final rule will not result in a significant change in costs, emission reductions, or benefits in 2015 (the year of full implementation of the 2012 NSPS being amended with this action).

#### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden. This action does not change the information collection requirements previously finalized under the 2012 NSPS and, as a result, does not impose any additional burden on industry. However, OMB has previously approved the information collection requirements contained in the existing regulations (see 77 FR 49490) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0673. The OMB control numbers for the EPA’s regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

#### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, a small entity is defined as: (1) A small business in the oil or natural gas industry whose parent company has no more than 500

employees (or revenues of less than \$7 million for firms that transport natural gas via pipeline); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today’s final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The EPA has determined that none of the small entities will experience a significant impact because these final amendments will not impose additional compliance costs on owners or operators of affected facilities.

#### *D. Unfunded Mandates Reform Act*

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action contains no requirements that apply to small governments nor does it impose obligations upon them.

#### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule is a reconsideration of an existing rule and imposes no new impacts or costs. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicited comment on the proposed action from state and local officials.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effect on tribal governments, on the relationship between the federal government and tribal governments or on the distribution of power and responsibilities between the federal government and tribal governments, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

In the spirit of Executive Order 13175, and consistent with the EPA policy to promote communications between the EPA and tribal governments, the EPA specifically solicited comment on the proposed action from tribal officials. The EPA notes that significant oil and natural gas development is occurring on some tribal lands and has been mindful of this in consideration of these final amendments.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the agency does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This final rule will not result in a significant change in emission reductions and benefits in 2015, the year of full implementation of the 2012 NSPS being amended with this action. Therefore, health and risk assessments were not conducted.

The public was invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure to HAP from oil and natural gas sector activities.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary

consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This final rule does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations because it does not affect the level of human health or environmental protection for all affected populations. This final rule is a reconsideration of an existing rule and imposes no new impacts or costs. Therefore, this final rule would not have any disproportionately high and adverse human health or environmental effects on any population, including any minority, low income or indigenous populations.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S.

Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective September 23, 2013.

**List of Subjects in 40 CFR Part 60**

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping.

Dated: August 2, 2013.

**Gina McCarthy,**  
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

**PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES**

■ 1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

**Subpart OOOO—[Amended]**

■ 2. Section 60.5365 is amended by revising paragraphs (e) and (h)(4) to read as follows:

**§ 60.5365 Am I subject to this subpart?**

\* \* \* \* \*

(e) Each storage vessel affected facility, which is a single storage vessel located in the oil and natural gas production segment, natural gas processing segment or natural gas transmission and storage segment, and has the potential for VOC emissions equal to or greater than 6 tpy as determined according to this section by October 15, 2013 for Group 1 storage vessels and by April 15, 2014, or 30 days after startup (whichever is later) for Group 2 storage vessels. A storage vessel affected facility that subsequently has its potential for VOC emissions decrease to less than 6 tpy shall remain an affected facility under this subpart. The potential for VOC emissions must be calculated using a generally accepted model or calculation methodology, based on the maximum average daily throughput determined for a 30-day period of production prior to the applicable emission determination deadline specified in this section. The determination may take into account requirements under a legally and practically enforceable limit in an operating permit or other requirement

established under a Federal, State, local or tribal authority. Any vapor from the storage vessel that is recovered and routed to a process through a VRU designed and operated as specified in this section is not required to be included in the determination of VOC potential to emit for purposes of determining affected facility status, provided you comply with the requirements in paragraphs (e)(1) through (4) of this section.

(1) You meet the cover requirements specified in § 60.5411(b).

(2) You meet the closed vent system requirements specified in § 60.5411(c).

(3) You maintain records that document compliance with paragraphs (e)(1) and (2) of this section.

(4) In the event of removal of apparatus that recovers and routes vapor to a process, or operation that is inconsistent with the conditions specified in paragraphs (e)(1) and (2) of this section, you must determine the storage vessel's potential for VOC emissions according to this section within 30 days of such removal or operation.

\* \* \* \* \*

(h) \* \* \*

(4) A gas well facility initially constructed after August 23, 2011, is considered an affected facility regardless of this provision.

■ 3. Section 60.5380 is amended by revising paragraphs (a)(2), (b), and (c) to read as follows:

**§ 60.5380 What standards apply to centrifugal compressor affected facilities?**

\* \* \* \* \*

(a) \* \* \*

(2) If you use a control device to reduce emissions, you must equip the wet seal fluid degassing system with a cover that meets the requirements of § 60.5411(b), that is connected through a closed vent system that meets the requirements of § 60.5411(a) and routed to a control device that meets the conditions specified in § 60.5412(a), (b) and (c). As an alternative to routing the closed vent system to a control device, you may route the closed vent system to a process.

(b) You must demonstrate initial compliance with the standards that apply to centrifugal compressor affected facilities as required by § 60.5410(b).

(c) You must demonstrate continuous compliance with the standards that apply to centrifugal compressor affected facilities as required by § 60.5415(b).

\* \* \* \* \*

■ 4. Section 60.5390 is amended by:

■ a. Revising the introductory text;

■ b. Revising paragraph (a); and

■ c. Revising paragraph (c).

The revisions read as follows:

**§ 60.5390 What standards apply to pneumatic controller affected facilities?**

For each pneumatic controller affected facility you must comply with the VOC standards, based on natural gas as a surrogate for VOC, in either paragraph (b)(1) or (c)(1) of this section, as applicable. Pneumatic controllers meeting the conditions in paragraph (a) of this section are exempt from this requirement.

(a) The requirements of paragraph (b)(1) or (c)(1) of this section are not required if you determine that the use of a pneumatic controller affected facility with a bleed rate greater than the applicable standard is required based on functional needs, including but not limited to response time, safety and positive actuation. However, you must tag such pneumatic controller with the month and year of installation, reconstruction or modification, and identification information that allows traceability to the records for that pneumatic controller, as required in § 60.5420(c)(4)(ii).

\* \* \* \* \*

(c)(1) Each pneumatic controller affected facility constructed, modified or reconstructed on or after October 15, 2013, at a location between the wellhead and a natural gas processing plant or the point of custody transfer to an oil pipeline must have a bleed rate less than or equal to 6 standard cubic feet per hour.

(2) Each pneumatic controller affected facility at a location between the wellhead and a natural gas processing plant or the point of custody transfer to an oil pipeline must be tagged with the month and year of installation, reconstruction or modification, and identification information that allows traceability to the records for that controller as required in § 60.5420(c)(4)(iii).

\* \* \* \* \*

■ 5. Section 60.5395 is revised to read as follows:

**§ 60.5395 What standards apply to storage vessel affected facilities?**

Except as provided in paragraph (h) of this section, you must comply with the standards in this section for each storage vessel affected facility.

(a)(1) If you are the owner or operator of a Group 1 storage vessel affected facility, you must comply with paragraph (b) of this section.

(2) If you are the owner or operator of a Group 2 storage vessel affected facility, you must comply with paragraph (c) of this section.

(b) *Requirements for Group 1 storage vessel affected facilities.* If you are the owner or operator of a Group 1 storage vessel affected facility, you must comply with paragraphs (b)(1) and (2) of this section.

(1) You must submit a notification identifying each Group 1 storage vessel affected facility, including its location, with your initial annual report as specified in § 60.5420(b)(6)(iv).

(2) You must comply with paragraphs (d) through (g) of this section.

(c) *Requirements for Group 2 storage vessel affected facilities.* If you are the owner or operator of a Group 2 storage vessel affected facility, you must comply with paragraphs (d) through (g) of this section.

(d) You must comply with the control requirements of paragraph (d)(1) of this section unless you meet the conditions specified in paragraph (d)(2) of this section.

(1) Reduce VOC emissions by 95.0 percent according to the schedule specified in (d)(1)(i) and (ii) of this section.

(i) For each Group 2 storage vessel affected facility, you must achieve the required emissions reductions by April 15, 2014, or within 60 days after startup, whichever is later.

(ii) For each Group 1 storage vessel affected facility, you must achieve the required emissions reductions by April 15, 2015.

(2) Maintain the uncontrolled actual VOC emissions from the storage vessel affected facility at less than 4 tpy without considering control. Prior to using the uncontrolled actual VOC emission rate for compliance purposes, you must demonstrate that the uncontrolled actual VOC emissions have remained less than 4 tpy as determined monthly for 12 consecutive months. After such demonstration, you must determine the uncontrolled actual VOC emission rate each month. The uncontrolled actual VOC emissions must be calculated using a generally accepted model or calculation methodology. Monthly calculations must be based on the average throughput for the month. Monthly calculations must be separated by at least 14 days. You must comply with paragraph (d)(1) of this section if your storage vessel affected facility meets the conditions specified in paragraphs (d)(2)(i) or (ii) of this section.

(i) If a well feeding the storage vessel affected facility undergoes fracturing or refracturing, you must comply with paragraph (d)(1) of this section as soon as liquids from the well following fracturing or refracturing are routed to the storage vessel affected facility.

(ii) If the monthly emissions determination required in this section indicates that VOC emissions from your storage vessel affected facility increase to 4 tpy or greater and the increase is not associated with fracturing or refracturing of a well feeding the storage vessel affected facility, you must comply with paragraph (d)(1) of this section within 30 days of the monthly calculation.

(e) *Control requirements.* (1) Except as required in paragraph (e)(2) of this section, if you use a control device to reduce emissions from your storage vessel affected facility, you must equip the storage vessel with a cover that meets the requirements of § 60.5411(b) and is connected through a closed vent system that meets the requirements of § 60.5411(c), and you must route emissions to a control device that meets the conditions specified in § 60.5412(c) and (d). As an alternative to routing the closed vent system to a control device, you may route the closed vent system to a process.

(2) If you use a floating roof to reduce emissions, you must meet the requirements of § 60.112b(a)(1) or (2) and the relevant monitoring, inspection, recordkeeping, and reporting requirements in 40 CFR part 60, subpart Kb.

(f) *Requirements for storage vessel affected facilities that are removed from service.* If you are the owner or operator of a storage vessel affected facility that is removed from service, you must comply with paragraphs (f)(1) and (2) of this section.

(1) You must submit a notification in your next annual report, identifying all storage vessel affected facilities removed from service during the reporting period.

(2) If the storage vessel affected facility identified in paragraph (f)(1) of this section is returned to service, you must comply with paragraphs (f)(2)(i) through (iii) of this section.

(i) If returning your storage vessel affected facility to service is associated with fracturing or refracturing of a well feeding the storage vessel affected facility, you must comply with paragraph (d) of this section immediately upon returning the storage vessel to service.

(ii) If returning your storage vessel affected facility to service is not associated with a well that was fractured or refractured, you must comply with paragraphs (f)(2)(ii)(A) and (B) of this section.

(A) You must determine emissions as specified in § 60.5365(e) within 30 days of returning your storage vessel affected facility to service.

(B) If the uncontrolled VOC emissions without considering control from your storage vessel affected facility are 4 tpy or greater, you must comply with paragraph (d) of this section within 60 days of returning to service.

(iii) You must submit a notification in your next annual report identifying each storage vessel affected facility that has been returned to service.

(g) *Compliance, notification, recordkeeping, and reporting.* You must comply with paragraphs (g)(1) through (3) of this section.

(1) You must demonstrate initial compliance with standards as required by § 60.5410(h) and (i).

(2) You must demonstrate continuous compliance with standards as required by § 60.5415(e)(3).

(3) You must perform the required notification, recordkeeping and reporting as required by § 60.5420.

(h) *Exemptions.* This subpart does not apply to storage vessels subject to and controlled in accordance with the requirements for storage vessels in 40 CFR part 60, subpart Kb, 40 CFR part 63, subparts G, CC, HH, or WW.

■ 6. Section 60.5410 is amended by:

■ a. Revising the introductory text;

■ b. Revising paragraphs (a)(3) and (4);

■ c. Revising paragraphs (b)(2) through (5);

■ d. Revising paragraphs (b)(7) and (8);

■ e. Removing and reserving paragraph (c)(2);

■ f. Revising paragraphs (d) introductory text, (d)(1), (d)(2), and (d)(4);

■ g. Removing and reserving paragraph (e); and

■ h. Adding paragraphs (h) and (i).

The revisions and additions read as follows:

**§ 60.5410 How do I demonstrate initial compliance with the standards for my gas well affected facility, my centrifugal compressor affected facility, my reciprocating compressor affected facility, my pneumatic controller affected facility, my storage vessel affected facility, and my equipment leaks and sweetening unit affected facilities at onshore natural gas processing plants?**

You must determine initial compliance with the standards for each affected facility using the requirements in paragraphs (a) through (i) of this section. The initial compliance period begins on October 15, 2012, or upon initial startup, whichever is later, and ends no later than one year after the initial startup date for your affected facility or no later than one year after October 15, 2012. The initial compliance period may be less than one full year.

(a) \* \* \*

(3) You must maintain a log of records as specified in § 60.5420(c)(1)(i) through (iv) for each well completion operation conducted during the initial compliance period.

(4) For each gas well affected facility subject to both § 60.5375(a)(1) and (3), as an alternative to retaining the records specified in § 60.5420(c)(1)(i) through (iv), you may maintain records of one or more digital photographs with the date the photograph was taken and the latitude and longitude of the well site imbedded within or stored with the digital file showing the equipment for storing or re-injecting recovered liquid, equipment for routing recovered gas to the gas flow line and the completion combustion device (if applicable) connected to and operating at each gas well completion operation that occurred during the initial compliance period. As an alternative to imbedded latitude and longitude within the digital photograph, the digital photograph may consist of a photograph of the equipment connected and operating at each well completion operation with a photograph of a separately operating GIS device within the same digital picture, provided the latitude and longitude output of the GIS unit can be clearly read in the digital photograph.

(b) \* \* \*

(2) If you use a control device to reduce emissions, you must equip the wet seal fluid degassing system with a cover that meets the requirements of § 60.5411(b) that is connected through a closed vent system that meets the requirements of § 60.5411(a) and is routed to a control device that meets the conditions specified in § 60.5412(a), (b) and (c). As an alternative to routing the closed vent system to a control device, you may route the closed vent system to a process.

(3) You must conduct an initial performance test as required in § 60.5413 within 180 days after initial startup or by October 15, 2012, whichever is later, and you must comply with the continuous compliance requirements in § 60.5415(b)(1) through (3).

(4) You must conduct the initial inspections required in § 60.5416(a) and (b).

(5) You must install and operate the continuous parameter monitoring systems in accordance with § 60.5417(a) through (g), as applicable.

\* \* \* \* \*

(7) You must submit the initial annual report for your centrifugal compressor affected facility as required in § 60.5420(b)(3) for each centrifugal compressor affected facility.

(8) You must maintain the records as specified in § 60.5420(c)(2).

(c) \* \* \*

(2) [Reserved]

\* \* \* \* \*

(d) To achieve initial compliance with emission standards for your pneumatic controller affected facility you must comply with the requirements specified in paragraphs (d)(1) through (6) of this section, as applicable.

(1) You must demonstrate initial compliance by maintaining records as specified in § 60.5420(c)(4)(ii) of your determination that the use of a pneumatic controller affected facility with a bleed rate greater than 6 standard cubic feet of gas per hour is required as specified in § 60.5390(a).

(2) You own or operate a pneumatic controller affected facility located at a natural gas processing plant and your pneumatic controller is driven by a gas other than natural gas and therefore emits zero natural gas.

\* \* \* \* \*

(4) You must tag each new pneumatic controller affected facility according to the requirements of § 60.5390(b)(2) or (c)(2).

\* \* \* \* \*

(e) [Reserved]

\* \* \* \* \*

(h) For each storage vessel affected facility, you must comply with paragraphs (h)(1) through (5) of this section. For a Group 1 storage vessel affected facility, you must demonstrate initial compliance by April 15, 2015, except as otherwise provided in paragraph (i) of this section. For a Group 2 storage vessel affected facility, you must demonstrate initial compliance by April 15, 2014, or within 60 days after startup, whichever is later.

(1) You must determine the potential VOC emission rate as specified in § 60.5365(e).

(2) You must reduce VOC emissions in accordance with § 60.5395(d).

(3) If you use a control device to reduce emissions, or if you route emissions to a process, you must demonstrate initial compliance by meeting the requirements in § 60.5395(e).

(4) You must submit the information required for your storage vessel affected facility as specified in § 60.5420(b).

(5) You must maintain the records required for your storage vessel affected facility, as specified in § 60.5420(c)(5) through (8) and § 60.5420(c)(12) and (13) for each storage vessel affected facility.

(i) For each Group 1 storage vessel affected facility, you must submit the notification specified in § 60.5395(b)(2)

with the initial annual report specified in § 60.5420(b)(6).

■ 7. Section 60.5411 is amended by:

■ a. Revising the section heading;

■ b. Revising paragraphs (a) introductory text, (a)(1), and (a)(3)(i)(A);

■ c. Revising the heading of paragraph (b), and paragraphs (b)(1) and (b)(2)(iv);

■ d. Adding paragraph (b)(3); and

■ e. Adding paragraph (c).

The revisions and additions read as follows:

**§ 60.5411 What additional requirements must I meet to determine initial compliance for my covers and closed vent systems routing materials from storage vessels and centrifugal compressor wet seal degassing systems?**

\* \* \* \* \*

(a) Closed vent system requirements for centrifugal compressor wet seal degassing systems. (1) You must design the closed vent system to route all gases, vapors, and fumes emitted from the material in the wet seal fluid degassing system to a control device or to a process that meets the requirements specified in § 60.5412(a) through (c).

\* \* \* \* \*

(3) \* \* \*

(i) \* \* \*

(A) You must properly install, calibrate, maintain, and operate a flow indicator at the inlet to the bypass device that could divert the stream away from the control device or process to the atmosphere that is capable of taking periodic readings as specified in § 60.5416(a)(4) and sounds an alarm when the bypass device is open such that the stream is being, or could be, diverted away from the control device or process to the atmosphere.

\* \* \* \* \*

(b) *Cover requirements for storage vessels and centrifugal compressor wet seal degassing systems.* (1) The cover and all openings on the cover (e.g., access hatches, sampling ports, pressure relief valves and gauge wells) shall form a continuous impermeable barrier over the entire surface area of the liquid in the storage vessel or wet seal fluid degassing system.

(2) \* \* \*

(iv) To vent liquids, gases, or fumes from the unit through a closed-vent system designed and operated in accordance with the requirements of paragraph (a) or (c) of this section to a control device or to a process.

(3) Each storage vessel thief hatch shall be weighted and properly seated. You must select gasket material for the hatch based on composition of the fluid in the storage vessel and weather conditions.

(c) *Closed vent system requirements for storage vessel affected facilities*

*using a control device or routing emissions to a process.* (1) You must design the closed vent system to route all gases, vapors, and fumes emitted from the material in the storage vessel to a control device that meets the requirements specified in § 60.5412(c) and (d), or to a process.

(2) You must design and operate a closed vent system with no detectable emissions, as determined using olfactory, visual and auditory inspections. Each closed vent system that routes emissions to a process must be operational 95 percent of the year or greater.

(3) You must meet the requirements specified in paragraphs (c)(3)(i) and (ii) of this section if the closed vent system contains one or more bypass devices that could be used to divert all or a portion of the gases, vapors, or fumes from entering the control device or to a process.

(i) Except as provided in paragraph (c)(3)(ii) of this section, you must comply with either paragraph (c)(3)(i)(A) or (B) of this section for each bypass device.

(A) You must properly install, calibrate, maintain, and operate a flow indicator at the inlet to the bypass device that could divert the stream away from the control device or process to the atmosphere that sounds an alarm, or, initiates notification via remote alarm to the nearest field office, when the bypass device is open such that the stream is being, or could be, diverted away from the control device or process to the atmosphere.

(B) You must secure the bypass device valve installed at the inlet to the bypass device in the non-diverting position using a car-seal or a lock-and-key type configuration.

(ii) Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements of paragraph (c)(3)(i) of this section.

■ 8. Section 60.5412 is amended by:

■ a. Revising paragraphs (a) introductory text, (a)(1) introductory text, and (a)(2);

■ b. Revising paragraph (b);

■ c. Revising paragraphs (c) introductory text and (c)(1); and

■ d. Adding paragraph (d).

The revisions and addition read as follows:

**§ 60.5412 What additional requirements must I meet for determining initial compliance with control devices used to comply with the emission standards for my storage vessel or centrifugal compressor affected facility?**

\* \* \* \* \*

(a) Each control device used to meet the emission reduction standard in § 60.5380(a)(1) for your centrifugal compressor affected facility must be installed according to paragraphs (a)(1) through (3) of this section. As an alternative, you may install a control device model tested under § 60.5413(d), which meets the criteria in § 60.5413(d)(11) and § 60.5413(e).

(1) Each combustion device (*e.g.*, thermal vapor incinerator, catalytic vapor incinerator, boiler, or process heater) must be designed and operated in accordance with one of the performance requirements specified in paragraphs (a)(1)(i) through (iv) of this section.

\* \* \* \* \*

(2) Each vapor recovery device (*e.g.*, carbon adsorption system or condenser) or other non-destructive control device must be designed and operated to reduce the mass content of VOC in the gases vented to the device by 95.0 percent by weight or greater as determined in accordance with the requirements of § 60.5413. As an alternative to the performance testing requirements, you may demonstrate initial compliance by conducting a design analysis for vapor recovery devices according to the requirements of § 60.5413(c).

\* \* \* \* \*

(b) You must operate each control device installed on your centrifugal compressor affected facility in accordance with the requirements specified in paragraphs (b)(1) and (2) of this section.

(1) You must operate each control device used to comply with this subpart at all times when gases, vapors, and fumes are vented from the wet seal fluid degassing system affected facility, as required under § 60.5380(a), through the closed vent system to the control device. You may vent more than one affected facility to a control device used to comply with this subpart.

(2) For each control device monitored in accordance with the requirements of § 60.5417(a) through (g), you must demonstrate compliance according to the requirements of § 60.5415(b)(2), as applicable.

(c) For each carbon adsorption system used as a control device to meet the requirements of paragraph (a)(2) or (d)(2) of this section, you must manage the carbon in accordance with the requirements specified in paragraphs (c)(1) or (2) of this section.

(1) Following the initial startup of the control device, you must replace all carbon in the control device with fresh carbon on a regular, predetermined time

interval that is no longer than the carbon service life established according to § 60.5413(c)(2) or (3) or according to the design required in paragraph (d)(2) of this section, for the carbon adsorption system. You must maintain records identifying the schedule for replacement and records of each carbon replacement as required in § 60.5420(c)(10) and (12).

\* \* \* \* \*

(d) Each control device used to meet the emission reduction standard in § 60.5395(d) for your storage vessel affected facility must be installed according to paragraphs (d)(1) through (3) of this section, as applicable. As an alternative, you may install a control device model tested under § 60.5413(d), which meets the criteria in § 60.5413(d)(11) and § 60.5413(e).

(1) Each enclosed combustion device (*e.g.*, thermal vapor incinerator, catalytic vapor incinerator, boiler, or process heater) must be designed to reduce the mass content of VOC emissions by 95.0 percent or greater. You must follow the requirements in paragraphs (d)(1)(i) through (iii) of this section.

(i) Ensure that each enclosed combustion device is maintained in a leak free condition.

(ii) Install and operate a continuous burning pilot flame.

(iii) Operate the enclosed combustion device with no visible emissions, except for periods not to exceed a total of one minute during any 15 minute period. A visible emissions test using section 11 of EPA Method 22, 40 CFR part 60, appendix A, must be performed at least once every calendar month, separated by at least 15 days between each test. The observation period shall be 15 minutes. Devices failing the visible emissions test must follow manufacturer's repair instructions, if available, or best combustion engineering practice as outlined in the unit inspection and maintenance plan, to return the unit to compliant operation. All inspection, repair and maintenance activities for each unit must be recorded in a maintenance and repair log and must be available for inspection. Following return to operation from maintenance or repair activity, each device must pass a Method 22, 40 CFR part 60, appendix A, visual observation as described in this paragraph.

(2) Each vapor recovery device (*e.g.*, carbon adsorption system or condenser) or other non-destructive control device must be designed and operated to reduce the mass content of VOC in the gases vented to the device by 95.0 percent by weight or greater. A carbon replacement schedule must be included

in the design of the carbon adsorption system.

(3) You must operate each control device used to comply with this subpart at all times when gases, vapors, and fumes are vented from the storage vessel affected facility through the closed vent system to the control device. You may vent more than one affected facility to a control device used to comply with this subpart.

■ 9. Section 60.5413 is amended by:

- a. Revising the introductory text;
- b. Revising paragraph (a)(7);
- c. Revising paragraph (d); and
- d. Adding paragraph (e).

The revisions and addition read as follows:

**§ 60.5413 What are the performance testing procedures for control devices used to demonstrate compliance at my storage vessel or centrifugal compressor affected facility?**

This section applies to the performance testing of control devices used to demonstrate compliance with the emissions standards for your centrifugal compressor affected facility. You must demonstrate that a control device achieves the performance requirements of § 60.5412(a) using the performance test methods and procedures specified in this section. For condensers, you may use a design analysis as specified in paragraph (c) of this section in lieu of complying with paragraph (b) of this section. In addition, this section contains the requirements for enclosed combustion device performance tests conducted by the manufacturer applicable to both storage vessel and centrifugal compressor affected facilities.

(a) \* \* \*

(7) A control device whose model can be demonstrated to meet the performance requirements of § 60.5412(a) through a performance test conducted by the manufacturer, as specified in paragraph (d) of this section.

\* \* \* \* \*

(d) *Performance testing for combustion control devices—manufacturers' performance test.* (1) This paragraph applies to the performance testing of a combustion control device conducted by the device manufacturer. The manufacturer must demonstrate that a specific model of control device achieves the performance requirements in paragraph (d)(11) of this section by conducting a performance test as specified in paragraphs (d)(2) through (10) of this section. You must submit a test report for each combustion control device in accordance with the

requirements in paragraph (d)(12) of this section.

(2) Performance testing must consist of three one-hour (or longer) test runs for each of the four firing rate settings specified in paragraphs (d)(2)(i) through (iv) of this section, making a total of 12 test runs per test. Propene (propylene) gas must be used for the testing fuel. All fuel analyses must be performed by an independent third-party laboratory (not affiliated with the control device manufacturer or fuel supplier).

(i) 90–100 percent of maximum design rate (fixed rate).

(ii) 70–100–70 percent (ramp up, ramp down). Begin the test at 70 percent of the maximum design rate. During the first 5 minutes, incrementally ramp the firing rate to 100 percent of the maximum design rate. Hold at 100 percent for 5 minutes. In the 10–15 minute time range, incrementally ramp back down to 70 percent of the maximum design rate. Repeat three more times for a total of 60 minutes of sampling.

(iii) 30–70–30 percent (ramp up, ramp down). Begin the test at 30 percent of the maximum design rate. During the first 5 minutes, incrementally ramp the firing rate to 70 percent of the maximum design rate. Hold at 70 percent for 5 minutes. In the 10–15 minute time range, incrementally ramp back down to 30 percent of the maximum design rate. Repeat three more times for a total of 60 minutes of sampling.

(iv) 0–30–0 percent (ramp up, ramp down). Begin the test at the minimum firing rate. During the first 5 minutes, incrementally ramp the firing rate to 30 percent of the maximum design rate. Hold at 30 percent for 5 minutes. In the 10–15 minute time range, incrementally ramp back down to the minimum firing rate. Repeat three more times for a total of 60 minutes of sampling.

(3) All models employing multiple enclosures must be tested simultaneously and with all burners operational. Results must be reported for each enclosure individually and for the average of the emissions from all interconnected combustion enclosures/chambers. Control device operating data must be collected continuously throughout the performance test using an electronic Data Acquisition System. A graphic presentation or strip chart of the control device operating data and emissions test data must be included in the test report in accordance with paragraph (d)(12) of this section. Inlet fuel meter data may be manually recorded provided that all inlet fuel data readings are included in the final report.

(4) Inlet testing must be conducted as specified in paragraphs (d)(4)(i) through (ii) of this section.

(i) The inlet gas flow metering system must be located in accordance with Method 2A, 40 CFR part 60, appendix A–1, (or other approved procedure) to measure inlet gas flow rate at the control device inlet location. You must position the fitting for filling fuel sample containers a minimum of eight pipe diameters upstream of any inlet gas flow monitoring meter.

(ii) Inlet flow rate must be determined using Method 2A, 40 CFR part 60, appendix A–1. Record the start and stop reading for each 60-minute THC test. Record the gas pressure and temperature at 5-minute intervals throughout each 60-minute test.

(5) Inlet gas sampling must be conducted as specified in paragraphs (d)(5)(i) through (ii) of this section.

(i) At the inlet gas sampling location, securely connect a Silonite-coated stainless steel evacuated canister fitted with a flow controller sufficient to fill the canister over a 3-hour period. Filling must be conducted as specified in paragraphs (d)(5)(i)(A) through (C) of this section.

(A) Open the canister sampling valve at the beginning of each test run, and close the canister at the end of each test run.

(B) Fill one canister across the three test runs such that one composite fuel sample exists for each test condition.

(C) Label the canisters individually and record sample information on a chain of custody form.

(ii) Analyze each inlet gas sample using the methods in paragraphs (d)(5)(ii)(A) through (C) of this section. You must include the results in the test report required by paragraph (d)(12) of this section.

(A) Hydrocarbon compounds containing between one and five atoms of carbon plus benzene using ASTM D1945–03.

(B) Hydrogen (H<sub>2</sub>), carbon monoxide (CO), carbon dioxide (CO<sub>2</sub>), nitrogen (N<sub>2</sub>), oxygen (O<sub>2</sub>) using ASTM D1945–03.

(C) Higher heating value using ASTM D3588–98 or ASTM D4891–89.

(6) Outlet testing must be conducted in accordance with the criteria in paragraphs (d)(6)(i) through (v) of this section.

(i) Sample and flow rate must be measured in accordance with paragraphs (d)(6)(i)(A) through (B) of this section.

(A) The outlet sampling location must be a minimum of four equivalent stack diameters downstream from the highest peak flame or any other flow

disturbance, and a minimum of one equivalent stack diameter upstream of the exit or any other flow disturbance. A minimum of two sample ports must be used.

(B) Flow rate must be measured using Method 1, 40 CFR part 60, appendix A–1 for determining flow measurement traverse point location, and Method 2, 40 CFR part 60, appendix A–1 for measuring duct velocity. If low flow conditions are encountered (*i.e.*, velocity pressure differentials less than 0.05 inches of water) during the performance test, a more sensitive manometer must be used to obtain an accurate flow profile.

(ii) Molecular weight and excess air must be determined as specified in paragraph (d)(7) of this section.

(iii) Carbon monoxide must be determined as specified in paragraph (d)(8) of this section.

(iv) THC must be determined as specified in paragraph (d)(9) of this section.

(v) Visible emissions must be determined as specified in paragraph (d)(10) of this section.

(7) Molecular weight and excess air determination must be performed as specified in paragraphs (d)(7)(i) through (iii) of this section.

(i) An integrated bag sample must be collected during the Method 4, 40 CFR part 60, appendix A–3, moisture test following the procedure specified in (d)(7)(i)(A) through (B) of this section. Analyze the bag sample using a gas chromatograph-thermal conductivity detector (GC–TCD) analysis meeting the criteria in paragraphs (d)(7)(i)(C) through (D) of this section.

(A) Collect the integrated sample throughout the entire test, and collect representative volumes from each traverse location.

(B) Purge the sampling line with stack gas before opening the valve and beginning to fill the bag. Clearly label each bag and record sample information on a chain of custody form.

(C) The bag contents must be vigorously mixed prior to the gas chromatograph analysis.

(D) The GC–TCD calibration procedure in Method 3C, 40 CFR part 60, appendix A, must be modified by using EPA Alt–045 as follows: For the initial calibration, triplicate injections of any single concentration must agree within 5 percent of their mean to be valid. The calibration response factor for a single concentration re-check must be within 10 percent of the original calibration response factor for that concentration. If this criterion is not met, repeat the initial calibration using at least three concentration levels.

(ii) Calculate and report the molecular weight of oxygen, carbon dioxide, methane, and nitrogen in the integrated bag sample and include in the test report specified in paragraph (d)(12) of this section. Moisture must be determined using Method 4, 40 CFR part 60, appendix A-3. Traverse both ports with the Method 4, 40 CFR part 60, appendix A-3, sampling train during each test run. Ambient air must not be introduced into the Method 3C, 40 CFR part 60, appendix A-2, integrated bag sample during the port change.

(iii) Excess air must be determined using resultant data from the EPA Method 3C tests and EPA Method 3B, 40 CFR part 60, appendix A, equation 3B-1.

(8) Carbon monoxide must be determined using Method 10, 40 CFR part 60, appendix A. Run the test simultaneously with Method 25A, 40 CFR part 60, appendix A-7 using the same sampling points. An instrument range of 0–10 parts per million by volume-dry (ppmvd) is recommended.

(9) Total hydrocarbon determination must be performed as specified by in paragraphs (d)(9)(i) through (vii) of this section.

(i) Conduct THC sampling using Method 25A, 40 CFR part 60, appendix A-7, except that the option for locating the probe in the center 10 percent of the stack is not allowed. The THC probe must be traversed to 16.7 percent, 50 percent, and 83.3 percent of the stack diameter during each test run.

(ii) A valid test must consist of three Method 25A, 40 CFR part 60, appendix A-7, tests, each no less than 60 minutes in duration.

(iii) A 0–10 parts per million by volume-wet (ppmvw) (as propane) measurement range is preferred; as an alternative a 0–30 ppmvw (as carbon) measurement range may be used.

(iv) Calibration gases must be propane in air and be certified through EPA Protocol 1—“EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards,” September 1997, as amended August 25, 1999, EPA-600/R-97/121 (or more recent if updated since 1999).

(v) THC measurements must be reported in terms of ppmvw as propane.

(vi) THC results must be corrected to 3 percent CO<sub>2</sub>, as measured by Method 3C, 40 CFR part 60, appendix A-2. You must use the following equation for this diluent concentration correction:

$$C_{\text{corr}} = C_{\text{meas}} \left( \frac{3}{\text{CO}_{2\text{meas}}} \right)$$

Where:

C<sub>meas</sub> = The measured concentration of the pollutant.

CO<sub>2meas</sub> = The measured concentration of the CO<sub>2</sub> diluent.

3 = The corrected reference concentration of CO<sub>2</sub> diluent.

C<sub>corr</sub> = The corrected concentration of the pollutant.

(vii) Subtraction of methane or ethane from the THC data is not allowed in determining results.

(10) Visible emissions must be determined using Method 22, 40 CFR part 60, appendix A. The test must be performed continuously during each test run. A digital color photograph of the exhaust point, taken from the position of the observer and annotated with date and time, must be taken once per test run and the 12 photos included in the test report specified in paragraph (d)(12) of this section.

(11) *Performance test criteria.* (i) The control device model tested must meet the criteria in paragraphs (d)(11)(i)(A) through (D) of this section. These criteria must be reported in the test report required by paragraph (d)(12) of this section.

(A) Method 22, 40 CFR part 60, appendix A, results under paragraph (d)(10) of this section with no indication of visible emissions.

(B) Average Method 25A, 40 CFR part 60, appendix A, results under paragraph (d)(9) of this section equal to or less than 10.0 ppmvw THC as propane corrected to 3.0 percent CO<sub>2</sub>.

(C) Average CO emissions determined under paragraph (d)(8) of this section equal to or less than 10 parts ppmvd, corrected to 3.0 percent CO<sub>2</sub>.

(D) Excess combustion air determined under paragraph (d)(7) of this section equal to or greater than 150 percent.

(ii) The manufacturer must determine a maximum inlet gas flow rate which must not be exceeded for each control device model to achieve the criteria in paragraph (d)(11)(iii) of this section. The maximum inlet gas flow rate must be included in the test report required by paragraph (d)(12) of this section.

(iii) A control device meeting the criteria in paragraph (d)(11)(i)(A) through (D) of this section must demonstrate a destruction efficiency of 95 percent for VOC regulated under this subpart.

(12) The owner or operator of a combustion control device model tested under this paragraph must submit the information listed in paragraphs (d)(12)(i) through (vi) in the test report required by this section in accordance with § 60.5420(b)(8).

(i) A full schematic of the control device and dimensions of the device components.

(ii) The maximum net heating value of the device.

(iii) The test fuel gas flow range (in both mass and volume). Include the maximum allowable inlet gas flow rate.

(iv) The air/stream injection/assist ranges, if used.

(v) The test conditions listed in paragraphs (d)(12)(v)(A) through (O) of this section, as applicable for the tested model.

(A) Fuel gas delivery pressure and temperature.

(B) Fuel gas moisture range.

(C) Purge gas usage range.

(D) Condensate (liquid fuel) separation range.

(E) Combustion zone temperature range. This is required for all devices that measure this parameter.

(F) Excess combustion air range.

(G) Flame arrestor(s).

(H) Burner manifold.

(I) Pilot flame indicator.

(J) Pilot flame design fuel and calculated or measured fuel usage.

(K) Tip velocity range.

(L) Momentum flux ratio.

(M) Exit temperature range.

(N) Exit flow rate.

(O) Wind velocity and direction.

(vi) The test report must include all calibration quality assurance/quality control data, calibration gas values, gas cylinder certification, strip charts, or other graphic presentations of the data annotated with test times and calibration values.

(e) *Continuous compliance for combustion control devices tested by the manufacturer in accordance with paragraph (d) of this section.* This paragraph applies to the demonstration of compliance for a combustion control device tested under the provisions in paragraph (d) of this section. Owners or operators must demonstrate that a control device achieves the performance requirements in (d)(11) of this section by installing a device tested under paragraph (d) of this section and complying with the criteria specified in paragraphs (e)(1) through (6) of this section.

(1) The inlet gas flow rate must be equal to or less than the maximum specified by the manufacturer.

(2) A pilot flame must be present at all times of operation.

(3) Devices must be operated with no visible emissions, except for periods not to exceed a total of 2 minutes during any hour. A visible emissions test using Method 22, 40 CFR part 60, appendix A, must be performed each calendar quarter. The observation period must be 1 hour and must be conducted according to EPA Method 22, 40 CFR part 60, appendix A.

(4) Devices failing the visible emissions test must follow manufacturer's repair instructions, if available, or best combustion engineering practice as outlined in the unit inspection and maintenance plan, to return the unit to compliant operation. All repairs and maintenance activities for each unit must be recorded in a maintenance and repair log and must be available for inspection.

(5) Following return to operation from maintenance or repair activity, each device must pass an EPA Method 22, 40 CFR part 60, appendix A, visual observation as described in paragraph (e)(3) of this section.

(6) If the owner or operator operates a combustion control device model tested under this section, an electronic copy of the performance test results required by this section shall be submitted via email to *Oil and Gas PT@EPA.GOV* unless the test results for that model of combustion control device are posted at the following Web site: *epa.gov/airquality/oilandgas/*.

■ 10. Section 60.5415 is amended by:

- a. Revising paragraphs (b) introductory text and (b)(2);
- b. Revising paragraph (e) introductory text;
- c. Removing and reserving paragraphs (e)(1) and (2);
- d. Adding paragraph (e)(3); and
- e. Revising paragraph (h)(1) introductory text.

The revisions and addition read as follows:

**§ 60.5415 How do I demonstrate continuous compliance with the standards for my gas well affected facility, my centrifugal compressor affected facility, my stationary reciprocating compressor affected facility, my pneumatic controller affected facility, my storage vessel affected facility, and my affected facilities at onshore natural gas processing plants?**

\* \* \* \* \*

(b) For each centrifugal compressor affected facility, you must demonstrate continuous compliance according to paragraphs (b)(1) through (3) of this section.

\* \* \* \* \*

(2) For each control device used to reduce emissions, you must demonstrate continuous compliance with the performance requirements of § 60.5412(a) using the procedures specified in paragraphs (b)(2)(i) through (vii) of this section. If you use a condenser as the control device to achieve the requirements specified in § 60.5412(a)(2), you must demonstrate compliance according to paragraph (b)(2)(viii) of this section. You may switch between compliance with

paragraphs (b)(2)(i) through (vii) of this section and compliance with paragraph (b)(2)(viii) of this section only after at least 1 year of operation in compliance with the selected approach. You must provide notification of such a change in the compliance method in the next annual report, as required in § 60.5420(b), following the change.

(i) You must operate below (or above) the site specific maximum (or minimum) parameter value established according to the requirements of § 60.5417(f)(1).

(ii) You must calculate the daily average of the applicable monitored parameter in accordance with § 60.5417(e) except that the inlet gas flow rate to the control device must not be averaged.

(iii) Compliance with the operating parameter limit is achieved when the daily average of the monitoring parameter value calculated under paragraph (b)(2)(ii) of this section is either equal to or greater than the minimum monitoring value or equal to or less than the maximum monitoring value established under paragraph (b)(2)(i) of this section. When performance testing of a combustion control device is conducted by the device manufacturer as specified in § 60.5413(d), compliance with the operating parameter limit is achieved when the criteria in § 60.5413(e) are met.

(iv) You must operate the continuous monitoring system required in § 60.5417 at all times the affected source is operating, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, system accuracy audits and required zero and span adjustments). A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to complete monitoring system repairs in response to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable.

(v) You may not use data recorded during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities in calculations used to report emissions or operating levels. You must use all the data collected

during all other required data collection periods to assess the operation of the control device and associated control system.

(vi) Failure to collect required data is a deviation of the monitoring requirements, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required quality monitoring system quality assurance or quality control activities (including, as applicable, system accuracy audits and required zero and span adjustments).

(vii) If you use a combustion control device to meet the requirements of § 60.5412(a) and you demonstrate compliance using the test procedures specified in § 60.5413(b), you must comply with paragraphs (b)(2)(vii)(A) through (D) of this section.

(A) A pilot flame must be present at all times of operation.

(B) Devices must be operated with no visible emissions, except for periods not to exceed a total of 2 minutes during any hour. A visible emissions test using section 11. of Method 22, 40 CFR part 60, appendix A, must be performed each calendar quarter. The observation period must be 1 hour and must be conducted according to section 11. of EPA Method 22, 40 CFR part 60, appendix A.

(C) Devices failing the visible emissions test must follow manufacturer's repair instructions, if available, or best combustion engineering practice as outlined in the unit inspection and maintenance plan, to return the unit to compliant operation. All repairs and maintenance activities for each unit must be recorded in a maintenance and repair log and must be available for inspection.

(D) Following return to operation from maintenance or repair activity, each device must pass a Method 22, 40 CFR part 60, appendix A, visual observation as described in paragraph (b)(2)(vii)(B) of this section.

(viii) If you use a condenser as the control device to achieve the percent reduction performance requirements specified in § 60.5412(a)(2), you must demonstrate compliance using the procedures in paragraphs (b)(2)(viii)(A) through (E) of this section.

(A) You must establish a site-specific condenser performance curve according to § 60.5417(f)(2).

(B) You must calculate the daily average condenser outlet temperature in accordance with § 60.5417(e).

(C) You must determine the condenser efficiency for the current operating day using the daily average condenser outlet temperature calculated under paragraph (b)(2)(viii)(B) of this

section and the condenser performance curve established under paragraph (b)(2)(viii)(A) of this section.

(D) Except as provided in paragraphs (b)(2)(viii)(D)(1) and (2) of this section, at the end of each operating day, you must calculate the 365-day rolling average TOC emission reduction, as appropriate, from the condenser efficiencies as determined in paragraph (b)(2)(viii)(C) of this section.

(1) After the compliance dates specified in § 60.5370, if you have less than 120 days of data for determining average TOC emission reduction, you must calculate the average TOC emission reduction for the first 120 days of operation after the compliance dates. You have demonstrated compliance with the overall 95.0 percent reduction requirement if the 120-day average TOC emission reduction is equal to or greater than 95.0 percent.

(2) After 120 days and no more than 364 days of operation after the compliance date specified in § 60.5370, you must calculate the average TOC emission reduction as the TOC emission reduction averaged over the number of days between the current day and the applicable compliance date. You have demonstrated compliance with the overall 95.0 percent reduction requirement, if the average TOC emission reduction is equal to or greater than 95.0 percent.

(E) If you have data for 365 days or more of operation, you have demonstrated compliance with the TOC emission reduction if the rolling 365-day average TOC emission reduction calculated in paragraph (b)(2)(viii)(D) of this section is equal to or greater than 95.0 percent.

\* \* \* \* \*

(e) You must demonstrate continuous compliance according to paragraph (e)(3) of this section for each storage vessel affected facility, for which you are using a control device or routing emissions to a process to meet the requirement of § 60.5395(d)(1).

(1) [Reserved]

(2) [Reserved]

(3) For each storage vessel affected facility, you must comply with paragraphs (e)(3)(i) and (ii) of this section.

(i) You must reduce VOC emissions as specified in § 60.5395(d).

(ii) For each control device installed to meet the requirements of § 60.5395(d), you must demonstrate continuous compliance with the performance requirements of § 60.5412(d) for each storage vessel affected facility using the procedure specified in paragraph (e)(3)(ii)(A) and

either (e)(3)(ii)(B) or (e)(3)(ii)(C) of this section.

(A) You must comply with § 60.5416(c) for each cover and closed vent system.

(B) You must comply with § 60.5417(h) for each control device.

(C) Each closed vent system that routes emissions to a process must be operated as specified in § 60.5411(c)(2).

\* \* \* \* \*

(h) \* \* \*

(1) To establish the affirmative defense in any action to enforce such a standard, you must timely meet the reporting requirements in § 60.5415(h)(2), and must prove by a preponderance of evidence that:

\* \* \* \* \*

■ 11. Section 60.5416 is amended by:

■ a. Revising the introductory text;

■ b. Revising paragraphs (a) introductory text, (a)(1)(ii), (a)(2)(iii), and (a)(3)(ii);

■ c. Revising paragraphs (b) introductory text, (b)(9) introductory text, and (b)(11); and

■ d. Adding paragraph (c).

The revisions and addition read as follows:

**§ 60.5416 What are the initial and continuous cover and closed vent system inspection and monitoring requirements for my storage vessel and centrifugal compressor affected facility?**

For each closed vent system or cover at your storage vessel or centrifugal compressor affected facility, you must comply with the applicable requirements of paragraphs (a) through (c) of this section.

(a) *Inspections for closed vent systems and covers installed on each centrifugal compressor affected facility.* Except as provided in paragraphs (b)(11) and (12) of this section, you must inspect each closed vent system according to the procedures and schedule specified in paragraphs (a)(1) and (2) of this section, inspect each cover according to the procedures and schedule specified in paragraph (a)(3) of this section, and inspect each bypass device according to the procedures of paragraph (a)(4) of this section.

(1) \* \* \*

(ii) Conduct annual visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in piping; loose connections; liquid leaks; or broken or missing caps or other closure devices. You must monitor a component or connection using the test methods and procedures in paragraph (b) of this section to demonstrate that it operates with no detectable emissions following any time the component is

repaired or replaced or the connection is unsealed. You must maintain records of the inspection results as specified in § 60.5420(c)(6).

(2) \* \* \*

(iii) Conduct annual visual inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork; loose connections; liquid leaks; or broken or missing caps or other closure devices. You must maintain records of the inspection results as specified in § 60.5420(c)(6).

(3) \* \* \*

(ii) You must initially conduct the inspections specified in paragraph (a)(3)(i) of this section following the installation of the cover. Thereafter, you must perform the inspection at least once every calendar year, except as provided in paragraphs (b)(11) and (12) of this section. You must maintain records of the inspection results as specified in § 60.5420(c)(7).

\* \* \* \* \*

(b) *No detectable emissions test methods and procedures.* If you are required to conduct an inspection of a closed vent system or cover at your centrifugal compressor affected facility as specified in paragraphs (a)(1), (2), or (3) of this section, you must meet the requirements of paragraphs (b)(1) through (13) of this section.

\* \* \* \* \*

(9) *Repairs.* In the event that a leak or defect is detected, you must repair the leak or defect as soon as practicable according to the requirements of paragraphs (b)(9)(i) and (ii) of this section, except as provided in paragraph (b)(10) of this section.

\* \* \* \* \*

(11) *Unsafe to inspect requirements.* You may designate any parts of the closed vent system or cover as unsafe to inspect if the requirements in paragraphs (b)(11)(i) and (ii) of this section are met. Unsafe to inspect parts are exempt from the inspection requirements of paragraphs (a)(1) through (3) of this section.

(i) You determine that the equipment is unsafe to inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraphs (a)(1), (2), or (3) of this section.

(ii) You have a written plan that requires inspection of the equipment as frequently as practicable during safe-to-inspect times.

\* \* \* \* \*

(c) *Cover and closed vent system inspections for storage vessel affected facilities.* If you install a control device

or route emissions to a process, you must inspect each closed vent system according to the procedures and schedule specified in paragraphs (c)(1) of this section, inspect each cover according to the procedures and schedule specified in paragraph (c)(2) of this section, and inspect each bypass device according to the procedures of paragraph (c)(3) of this section. You must also comply with the requirements of (c)(4) through (7) of this section.

(1) For each closed vent system, you must conduct an inspection at least once every calendar month as specified in paragraphs (c)(1)(i) through (iii) of this section.

(i) You must maintain records of the inspection results as specified in § 60.5420(c)(6).

(ii) Conduct olfactory, visual and auditory inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in piping; loose connections; liquid leaks; or broken or missing caps or other closure devices.

(iii) Monthly inspections must be separated by at least 14 calendar days.

(2) For each cover, you must conduct inspections at least once every calendar month as specified in paragraphs (c)(2)(i) through (iii) of this section.

(i) You must maintain records of the inspection results as specified in § 60.5420(c)(7).

(ii) Conduct olfactory, visual and auditory inspections for defects that could result in air emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover, or between the cover and the separator wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices. In the case where the storage vessel is buried partially or entirely underground, you must inspect only those portions of the cover that extend to or above the ground surface, and those connections that are on such portions of the cover (e.g., fill ports, access hatches, gauge wells, etc.) and can be opened to the atmosphere.

(iii) Monthly inspections must be separated by at least 14 calendar days.

(3) For each bypass device, except as provided for in § 60.5411(c)(3)(ii), you must meet the requirements of paragraphs (c)(3)(i) or (ii) of this section.

(i) Set the flow indicator to sound an alarm at the inlet to the bypass device when the stream is being diverted away from the control device or process to the atmosphere. You must maintain records of each time the alarm is sounded according to § 60.5420(c)(8).

(ii) If the bypass device valve installed at the inlet to the bypass device is secured in the non-diverting position using a car-seal or a lock-and-key type configuration, visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass device. You must maintain records of the inspections and records of each time the key is checked out, if applicable, according to § 60.5420(c)(8).

(4) *Repairs.* In the event that a leak or defect is detected, you must repair the leak or defect as soon as practicable according to the requirements of paragraphs (c)(4)(i) through (iii) of this section, except as provided in paragraph (c)(5) of this section.

(i) A first attempt at repair must be made no later than 5 calendar days after the leak is detected.

(ii) Repair must be completed no later than 30 calendar days after the leak is detected.

(iii) Grease or another applicable substance must be applied to deteriorating or cracked gaskets to improve the seal while awaiting repair.

(5) *Delay of repair.* Delay of repair of a closed vent system or cover for which leaks or defects have been detected is allowed if the repair is technically infeasible without a shutdown, or if you determine that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. You must complete repair of such equipment by the end of the next shutdown.

(6) *Unsafe to inspect requirements.* You may designate any parts of the closed vent system or cover as unsafe to inspect if the requirements in paragraphs (c)(6)(i) and (ii) of this section are met. Unsafe to inspect parts are exempt from the inspection requirements of paragraphs (c)(1) and (2) of this section.

(i) You determine that the equipment is unsafe to inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraphs (c)(1) or (2) of this section.

(ii) You have a written plan that requires inspection of the equipment as frequently as practicable during safe-to-inspect times.

(7) *Difficult to inspect requirements.* You may designate any parts of the closed vent system or cover as difficult to inspect, if the requirements in paragraphs (c)(7)(i) and (ii) of this section are met. Difficult to inspect parts are exempt from the inspection

requirements of paragraphs (c)(1) and (2) of this section.

(i) You determine that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters above a support surface.

(ii) You have a written plan that requires inspection of the equipment at least once every 5 years.

■ 12. Section 60.5417 is amended by:

■ a. Revising paragraph (a);

■ b. Revising paragraph (b) introductory text;

■ c. Revising paragraph (c) introductory text;

■ d. Revising paragraphs (d)(1)(viii)(A) and (B);

■ e. Revising paragraph (d)(2);

■ f. Revising paragraph (f)(1)(iii);

■ g. Revising paragraph (g)(6)(ii); and

■ h. Adding paragraph (h).

The revisions and addition read as follows:

**§ 60.5417 What are the continuous control device monitoring requirements for my storage vessel or centrifugal compressor affected facility?**

\* \* \* \* \*

(a) For each control device used to comply with the emission reduction standard for centrifugal compressor affected facilities in § 60.5380, you must install and operate a continuous parameter monitoring system for each control device as specified in paragraphs (c) through (g) of this section, except as provided for in paragraph (b) of this section. If you install and operate a flare in accordance with § 60.5412(a)(3), you are exempt from the requirements of paragraphs (e) and (f) of this section.

(b) You are exempt from the monitoring requirements specified in paragraphs (c) through (g) of this section for the control devices listed in paragraphs (b)(1) and (2) of this section.

\* \* \* \* \*

(c) If you are required to install a continuous parameter monitoring system, you must meet the specifications and requirements in paragraphs (c)(1) through (4) of this section.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(viii) \* \* \*

(A) The continuous monitoring system must measure gas flow rate at the inlet to the control device. The monitoring instrument must have an accuracy of  $\pm 2$  percent or better. The flow rate at the inlet to the combustion device must not exceed the maximum or minimum flow rate determined by the manufacturer.

(B) A monitoring device that continuously indicates the presence of

the pilot flame while emissions are routed to the control device.

(2) An organic monitoring device equipped with a continuous recorder that measures the concentration level of organic compounds in the exhaust vent stream from the control device. The monitor must meet the requirements of Performance Specification 8 or 9 of 40 CFR part 60, appendix B. You must install, calibrate, and maintain the monitor according to the manufacturer's specifications.

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(iii) If you operate a control device where the performance test requirement was met under § 60.5413(d) to demonstrate that the control device achieves the applicable performance requirements specified in § 60.5412(a), then your control device inlet gas flow rate must not exceed the maximum or minimum inlet gas flow rate determined by the manufacturer.

\* \* \* \* \*

(g) \* \* \*

(6) \* \* \*

(ii) Failure of the quarterly visible emissions test conducted under § 60.5413(e)(3) occurs.

(h) For each control device used to comply with the emission reduction standard in § 60.5395(d)(1) for your storage vessel affected facility, you must demonstrate continuous compliance according to paragraphs (h)(1) through (h)(3) of this section. You are exempt from the requirements of this paragraph if you install a control device model tested in accordance with § 60.5413(d)(2) through (10), which meets the criteria in § 60.5413(d)(11), the reporting requirement in § 60.5413(d)(12), and meet the continuous compliance requirement in § 60.5413(e).

(1) For each combustion device you must conduct inspections at least once every calendar month according to paragraphs (h)(1)(i) through (iv) of this section. Monthly inspections must be separated by at least 14 calendar days.

(i) Conduct visual inspections to confirm that the pilot is lit when vapors are being routed to the combustion device and that the continuous burning pilot flame is operating properly.

(ii) Conduct inspections to monitor for visible emissions from the combustion device using section 11 of EPA Method 22, 40 CFR part 60, appendix A. The observation period shall be 15 minutes. Devices must be operated with no visible emissions, except for periods not to exceed a total of 1 minute during any 15 minute period.

(iii) Conduct olfactory, visual and auditory inspections of all equipment associated with the combustion device to ensure system integrity.

(iv) For any absence of pilot flame, or other indication of smoking or improper equipment operation (e.g., visual, audible, or olfactory), you must ensure the equipment is returned to proper operation as soon as practicable after the event occurs. At a minimum, you must perform the procedures specified in paragraphs (h)(1)(iv)(A) and (B) of this section.

(A) You must check the air vent for obstruction. If an obstruction is observed, you must clear the obstruction as soon as practicable.

(B) You must check for liquid reaching the combustor.

(2) For each vapor recovery device, you must conduct inspections at least once every calendar month to ensure physical integrity of the control device according to the manufacturer's instructions. Monthly inspections must be separated by at least 14 calendar days.

(3) Each control device must be operated following the manufacturer's written operating instructions, procedures and maintenance schedule to ensure good air pollution control practices for minimizing emissions. Records of the manufacturer's written operating instructions, procedures, and maintenance schedule must be available for inspection as specified in § 60.5420(c)(13).

■ 13. Section 60.5420 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Revising paragraph (a)(1);

■ c. Revising paragraph (b) introductory text;

■ d. Revising paragraph (b)(3)(iii);

■ e. Revising paragraph (b)(4)(i);

■ f. Revising paragraph (b)(5) introductory text;

■ g. Revising paragraph (b)(5)(i);

■ h. Revising paragraph (b)(6) introductory text;

■ i. Revising paragraphs (b)(6)(i) and (ii);

■ j. Adding paragraphs (b)(6)(iv) through (vii);

■ k. Revising paragraph (b)(7);

■ l. Adding paragraph (b)(8);

■ m. Revising paragraph (c) introductory text;

■ n. Revising paragraph (c)(1)(v);

■ o. Revising paragraph (c)(4)(ii);

■ p. Revising paragraph (c)(5);

■ q. Revising paragraphs (c)(6) through (11); and

■ r. Adding paragraphs (c)(12) and (13).

The revisions and additions read as follows:

#### § 60.5420 What are my notification, reporting, and recordkeeping requirements?

(a) You must submit the notifications according to paragraphs (a)(1) and (2) of this section if you own or operate one or more of the affected facilities specified in § 60.5365 that was constructed, modified, or reconstructed during the reporting period.

(1) If you own or operate a gas well, pneumatic controller, centrifugal compressor, reciprocating compressor or storage vessel affected facility you are not required to submit the notifications required in § 60.7(a)(1), (3), and (4).

\* \* \* \* \*

(b) Reporting requirements. You must submit annual reports containing the information specified in paragraphs (b)(1) through (6) of this section to the Administrator and performance test reports as specified in paragraph (b)(7) or (8) of this section. The initial annual report is due no later than 90 days after the end of the initial compliance period as determined according to § 60.5410. Subsequent annual reports are due no later than same date each year as the initial annual report. If you own or operate more than one affected facility, you may submit one report for multiple affected facilities provided the report contains all of the information required as specified in paragraphs (b)(1) through (6) of this section. Annual reports may coincide with title V reports as long as all the required elements of the annual report are included. You may arrange with the Administrator a common schedule on which reports required by this part may be submitted as long as the schedule does not extend the reporting period.

\* \* \* \* \*

(3) \* \* \*

(iii) If required to comply with § 60.5380(a)(1), the records specified in paragraphs (c)(6) through (11) of this section.

(4) \* \* \*

(i) The cumulative number of hours of operation or the number of months since initial startup, since October 15, 2012, or since the previous reciprocating compressor rod packing replacement, whichever is later.

\* \* \* \* \*

(5) For each pneumatic controller affected facility, the information specified in paragraphs (b)(5)(i) through (iii) of this section.

(i) An identification of each pneumatic controller constructed, modified or reconstructed during the reporting period, including the

identification information specified in § 60.5390(b)(2) or (c)(2).

(6) For each storage vessel affected facility, the information in paragraphs (b)(6)(i) through (vii) of this section.

(i) An identification, including the location, of each storage vessel affected facility for which construction, modification or reconstruction commenced during the reporting period. The location of the storage vessel shall be in latitude and longitude coordinates in decimal degrees to an accuracy and precision of five (5) decimals of a degree using the North American Datum of 1983.

(ii) Documentation of the VOC emission rate determination according to § 60.5365(e).

(iv) You must submit a notification identifying each Group 1 storage vessel affected facility in your initial annual report. You must include the location of the storage vessel, in latitude and longitude coordinates in decimal degrees to an accuracy and precision of five (5) decimals of a degree using the North American Datum of 1983.

(v) A statement that you have met the requirements specified in § 60.5410(h)(2) and (3).

(vi) You must identify each storage vessel affected facility that is removed from service during the reporting period as specified in § 60.5395(f)(1).

(vii) You must identify each storage vessel affected facility for which operation resumes during the reporting period as specified in § 60.5395(f)(2)(iii).

(7)(i) Within 60 days after the date of completing each performance test (see § 60.8 of this part) as required by this subpart, except testing conducted by the manufacturer as specified in § 60.5413(d), you must submit the results of the performance tests required by this subpart to the EPA as follows. You must use the latest version of the EPA's Electronic Reporting Tool (ERT) (see <http://www.epa.gov/ttn/chief/ert/index.html>) existing at the time of the performance test to generate a submission package file, which documents the performance test. You must then submit the file generated by the ERT through the EPA's Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed by logging in to the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>). Only data collected using test methods supported by the ERT as listed on the ERT Web site are subject to this requirement for submitting reports electronically. Owners or operators who claim that some of the information being

submitted for performance tests is confidential business information (CBI) must submit a complete ERT file including information claimed to be CBI on a compact disk or other commonly used electronic storage media (including, but not limited to, flash drives) to EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: WebFIRE Administrator, MD C404-02, 4930 Old Page Rd., Durham, NC 27703. The same ERT file with the CBI omitted must be submitted to EPA via CDX as described earlier in this paragraph. At the discretion of the delegated authority, you must also submit these reports, including the confidential business information, to the delegated authority in the format specified by the delegated authority. For any performance test conducted using test methods that are not listed on the ERT Web site, the owner or operator shall submit the results of the performance test to the Administrator at the appropriate address listed in § 60.4.

(ii) All reports, except as specified in paragraph (b)(8) of this section, required by this subpart not subject to the requirements in paragraph (a)(2)(i) of this section must be sent to the Administrator at the appropriate address listed in § 60.4 of this part. The Administrator or the delegated authority may request a report in any form suitable for the specific case (e.g., by commonly used electronic media such as Excel spreadsheet, on CD or hard copy).

(8) For enclosed combustors tested by the manufacturer in accordance with § 60.5413(d), an electronic copy of the performance test results required by § 60.5413(d) shall be submitted via email to [Oil\\_and\\_Gas\\_PT@EPA.GOV](mailto:Oil_and_Gas_PT@EPA.GOV) unless the test results for that model of combustion control device are posted at the following Web site: [epa.gov/airquality/oilandgas/](http://epa.gov/airquality/oilandgas/).

(c) *Recordkeeping requirements.* You must maintain the records identified as specified in § 60.7(f) and in paragraphs (c)(1) through (13) of this section. All records required by this subpart must be maintained either onsite or at the nearest local field office for at least 5 years.

(1) \* \* \*

(v) For each gas well affected facility required to comply with both § 60.5375(a)(1) and (3), if you are using a digital photograph in lieu of the records required in paragraphs (c)(1)(i) through (iv) of this section, you must retain the records of the digital

photograph as specified in § 60.5410(a)(4).

\* \* \* \* \*

(4) \* \* \*  
(ii) Records of the demonstration that the use of pneumatic controller affected facilities with a natural gas bleed rate greater than the applicable standard are required and the reasons why.

\* \* \* \* \*

(5) Except as specified in paragraph (c)(5)(v) of this section, for each storage vessel affected facility, you must maintain the records identified in paragraphs (c)(5)(i) through (iv) of this section.

(i) If required to reduce emissions by complying with § 60.5395(d)(1), the records specified in §§ 60.5420(c)(6) through (8), § 60.5416(c)(6)(ii), and § 60.6516(c)(7)(ii) of this subpart.

(ii) Records of each VOC emissions determination for each storage vessel affected facility made under § 60.5365(e) including identification of the model or calculation methodology used to calculate the VOC emission rate.

(iii) Records of deviations in cases where the storage vessel was not operated in compliance with the requirements specified in §§ 60.5395, 60.5411, 60.5412, and 60.5413, as applicable.

(iv) For storage vessels that are skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges or ships), records indicating the number of consecutive days that the vessel is located at a site in the oil and natural gas production segment, natural gas processing segment or natural gas transmission and storage segment. If a storage vessel is removed from a site and, within 30 days, is either returned to or replaced by another storage vessel at the site to serve the same or similar function, then the entire period since the original storage vessel was first located at the site, including the days when the storage vessel was removed, will be added to the count towards the number of consecutive days.

(v) You must maintain records of the identification and location of each storage vessel affected facility.

(6) Records of each closed vent system inspection required under § 60.5416(a)(1) for centrifugal compressors or § 60.5416(c)(1) for storage vessels.

(7) A record of each cover inspection required under § 60.5416(a)(3) for centrifugal compressors or § 60.5416(c)(2) for storage vessels.

(8) If you are subject to the bypass requirements of § 60.5416(a)(4) for centrifugal compressors or

§ 60.5416(c)(3) for storage vessels, a record of each inspection or a record each time the key is checked out or a record of each time the alarm is sounded.

(9) If you are subject to the closed vent system no detectable emissions requirements of § 60.5416(b) for centrifugal compressors, a record of the monitoring conducted in accordance with § 60.5416(b).

(10) For each centrifugal compressor affected facility, records of the schedule for carbon replacement (as determined by the design analysis requirements of § 60.5413(c)(2) or (3)) and records of each carbon replacement as specified in § 60.5412(c)(1).

(11) For each centrifugal compressor subject to the control device requirements of § 60.5412(a), (b), and (c), records of minimum and maximum operating parameter values, continuous parameter monitoring system data, calculated averages of continuous parameter monitoring system data, results of all compliance calculations, and results of all inspections.

(12) For each carbon adsorber installed on storage vessel affected facilities, records of the schedule for carbon replacement (as determined by the design analysis requirements of § 60.5412(d)(2)) and records of each carbon replacement as specified in § 60.5412(c)(1).

(13) For each storage vessel affected facility subject to the control device requirements of § 60.5412(c) and (d), you must maintain records of the inspections, including any corrective actions taken, the manufacturers' operating instructions, procedures and maintenance schedule as specified in § 60.5417(h). You must maintain records of EPA Method 22, 40 CFR part 60, appendix A, section 11 results, which include: company, location, company representative (name of the person

performing the observation), sky conditions, process unit (type of control device), clock start time, observation period duration (in minutes and seconds), accumulated emission time (in minutes and seconds), and clock end time. You may create your own form including the above information or use Figure 22–1 in EPA Method 22, 40 CFR part 60, appendix A. Manufacturer's operating instructions, procedures and maintenance schedule must be available for inspection.

■ 14. Section 60.5430 is amended by:

■ a. Adding, in alphabetical order, definitions for the terms “Condensate,” “Group 1 storage vessel,” “Group 2 storage vessel,” “Intermediate hydrocarbon liquid” and “Produced water;” and

■ b. Revising the definitions for “Flow line” and “Storage vessel” to read as follows:

**§ 60.5430 What definitions apply to this subpart?**

\* \* \* \* \*

*Condensate* means hydrocarbon liquid separated from natural gas that condenses due to changes in the temperature, pressure, or both, and remains liquid at standard conditions.

\* \* \* \* \*

*Flow line* means a pipeline used to transport oil and/or gas to a processing facility, a mainline pipeline, re-injection, or routed to a process or other useful purpose.

\* \* \* \* \*

*Group 1 storage vessel* means a storage vessel, as defined in this section, for which construction, modification or reconstruction has commenced after August 23, 2011, and on or before April 12, 2013.

*Group 2 storage vessel* means a storage vessel, as defined in this section, for which construction, modification or

reconstruction has commenced after April 12, 2013.

\* \* \* \* \*

*Intermediate hydrocarbon liquid* means any naturally occurring, unrefined petroleum liquid.

\* \* \* \* \*

*Produced water* means water that is extracted from the earth from an oil or natural gas production well, or that is separated from crude oil, condensate, or natural gas after extraction.

\* \* \* \* \*

*Storage vessel* means a tank or other vessel that contains an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water, and that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provide structural support. For the purposes of this subpart, the following are not considered storage vessels:

(1) Vessels that are skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges or ships), and are intended to be located at a site for less than 180 consecutive days. If you do not keep or are not able to produce records, as required by § 60.5420(c)(5)(iv), showing that the vessel has been located at a site for less than 180 consecutive days, the vessel described herein is considered to be a storage vessel since the original vessel was first located at the site.

(2) Process vessels such as surge control vessels, bottoms receivers or knockout vessels.

(3) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere.

\* \* \* \* \*

■ 15. Tables 1 and 2 to Subpart OOOO of part 60 are revised to read as follows:

TABLE 1 TO SUBPART OOOO OF PART 60—REQUIRED MINIMUM INITIAL SO<sub>2</sub> EMISSION REDUCTION EFFICIENCY (Z<sub>i</sub>)

| H <sub>2</sub> S content of acid gas (Y), % | Sulfur feed rate (X), LT/D |  |              |         |
|---|----------------------------|--|--------------|---------|
|   | 2.0≤X≤5.0                  | 5.0<X≤15.0   | 15.0<X≤300.0 | X>300.0 |
| Y≥50 .....                                  | 79.0                       | 88.51X <sup>0.0101</sup> Y <sup>0.0125</sup> or 99.9, whichever is smaller.      |              |         |
| 20≤Y<50 .....                               | 79.0                       | 88.51X <sup>0.0101</sup> Y <sup>0.0125</sup> or 97.9, whichever is smaller       |              |         |
| 10≤Y<20 .....                               | 79.0                       | 88.51X <sup>0.0101</sup> Y <sup>0.0125</sup> or 93.5, whichever is smaller ..... | 93.5         | 93.5    |
| Y<10 .....                                  | 79.0                       | 79.0 .....   | 79.0         | 79.0    |

TABLE 2 TO SUBPART OOOO OF PART 60—REQUIRED MINIMUM SO<sub>2</sub> EMISSION REDUCTION EFFICIENCY (Z<sub>c</sub>)

| H <sub>2</sub> S content of acid gas (Y), % | Sulfur feed rate (X), LT/D |  |              |         |
|---|----------------------------|--|--------------|---------|
|   | 2.0≤X≤5.0                  | 5.0<X≤15.0   | 15.0<X≤300.0 | X>300.0 |
| Y≥50 .....                                  | 74.0                       | 85.35X <sup>0.0144</sup> Y <sup>0.0128</sup> or 99.9, whichever is smaller.      |              |         |
| 20≤Y<50 .....                               | 74.0                       | 85.35X <sup>0.0144</sup> Y <sup>0.0128</sup> or 97.5, whichever is smaller       |              | 97.5    |
| 10≤Y<20 .....                               | 74.0                       | 85.35X <sup>0.0144</sup> Y <sup>0.0128</sup> or 90.8, whichever is smaller ..... | 90.8         | 90.8    |
| Y<10 .....                                  | 74.0                       | 74.0 .....   | 74.0         | 74.0    |

X = The sulfur feed rate from the sweetening unit (*i.e.*, the H<sub>2</sub>S in the acid gas), expressed as sulfur, Mg/D(LT/D), rounded to one decimal place.

Y = The sulfur content of the acid gas from the sweetening unit, expressed as mole percent H<sub>2</sub>S (dry basis) rounded to one decimal place.

Z = The minimum required sulfur dioxide (SO<sub>2</sub>) emission reduction efficiency, expressed as percent carried to one decimal place. Z<sub>i</sub> refers to the reduction efficiency required at the initial performance test. Z<sub>c</sub> refers to the reduction efficiency required on a continuous basis after compliance with Z<sub>i</sub> has been demonstrated.

[FR Doc. 2013-22010 Filed 9-20-13; 8:45 am]

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**S. 256/P.L. 113-34**

To amend Public Law 93-435 with respect to the Northern Mariana Islands, providing parity with Guam, the Virgin Islands, and American Samoa. (Sept. 18, 2013; 127 Stat. 518)

**S. 304/P.L. 113-35**

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